



Montana Legislative History

Chapter: 544 Session L: 1989

Bill Number: Senate Bill 322

Checklist of Bill History

History and Final Status Sheet	x
Introduced Bill	X
Fiscal Note	N/A
Third Reading Bill	X
Final Version of Bill	X

House

Committee:
Judiciary

Hearing Date(s):
March 7, 1989
(Hearing)

March 8, 1989
(Executive
Action)

Senate

Committee: Judiciary

Hearing Date(s):
February 6, 1989

Conference Committee

Hearing Date(s): n/a

Compiler Notes

Compiled by: sg

Date: May 3, 2024

SENATE FINAL STATUS

RETURNED TO SENATE
 3/15 SIGNED BY PRESIDENT
 3/15 SIGNED BY SPEAKER
 3/16 TRANSMITTED TO GOVERNOR
 3/21 SIGNED BY GOVERNOR
 CHAPTER NUMBER 200 EFFECTIVE DATE: 3/21/89

SB 321 INTRODUCED BY BECK, ET AL.
 GENERALLY REVISE HAZARDOUS WASTE ACT, INCLUDING
 UNDERGROUND TANKS AND RELATED FEES

2/02 INTRODUCED
 2/02 REFERRED TO NATURAL RESOURCES
 2/04 FISCAL NOTE REQUESTED
 2/08 HEARING
 2/10 FISCAL NOTE RECEIVED
 2/11 FISCAL NOTE PRINTED
 2/13 HEARING
 2/14 FISCAL NOTE PRINTED
 2/15 COMMITTEE REPORT--BILL PASSED AS AMENDED
 2/17 2ND READING PASSED AS AMENDED 39 0
 2/20 3RD READING PASSED 44 6

 TRANSMITTED TO HOUSE
 2/21 REFERRED TO NATURAL RESOURCES
 3/08 HEARING
 3/14 COMMITTEE REPORT--BILL CONCURRED
 3/15 2ND READING CONCURRED 82 6
 3/22 3RD READING CONCURRED 92 4

RETURNED TO SENATE
 3/27 SIGNED BY PRESIDENT
 3/27 SIGNED BY SPEAKER
 3/28 TRANSMITTED TO GOVERNOR
 3/30 SIGNED BY GOVERNOR
 CHAPTER NUMBER 384 EFFECTIVE DATE: 3/30/89

SB 322 INTRODUCED BY VAN VALKENBURG, ET AL.
 REVISE THE MEDIA CONFIDENTIALITY ACT

2/02 INTRODUCED
 2/02 REFERRED TO JUDICIARY
 2/06 HEARING
 2/06 COMMITTEE REPORT--BILL PASSED
 2/09 2ND READING PASSED 50 0
 2/11 3RD READING PASSED 46 0

 TRANSMITTED TO HOUSE
 2/21 REFERRED TO JUDICIARY
 3/07 HEARING
 3/08 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
 3/11 2ND READING CONCURRED AS AMENDED 88 0
 3/14 3RD READING CONCURRED 98 0

 RETURNED TO SENATE WITH AMENDMENTS
 4/01 2ND READING AMENDMENTS CONCURRED 48 0
 4/04 3RD READING AMENDMENTS CONCURRED 48 0

 4/08 SIGNED BY PRESIDENT
 4/08 SIGNED BY SPEAKER

SENATE FINAL STATUS

4/10 TRANSMITTED TO GOVERNOR
 4/14 SIGNED BY GOVERNOR
 CHAPTER NUMBER 544 EFFECTIVE DATE: 10/01/89

SB 323 INTRODUCED BY VAUGHN
 PROVIDE PENALTY FOR LATE LICENSE RENEWAL OF HOTEL,
 FOOD ESTABLISHMENT, CAMPING, ETC.
 BY REQUEST OF DEPARTMENT OF HEALTH &
 ENVIRONMENTAL SCIENCES

2/02 INTRODUCED
 2/02 REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY
 2/04 FISCAL NOTE REQUESTED
 2/08 HEARING
 2/08 FISCAL NOTE RECEIVED
 2/09 FISCAL NOTE PRINTED
 2/13 COMMITTEE REPORT--BILL PASSED AS AMENDED
 2/15 2ND READING PASSED 36 7
 2/17 3RD READING PASSED 41 9

TRANSMITTED TO HOUSE
 2/21 REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT
 3/07 HEARING
 3/07 COMMITTEE REPORT--BILL CONCURRED
 3/09 2ND READING CONCURRED 73 14
 3/10 3RD READING CONCURRED 74 15
 3/16 SIGNED BY PRESIDENT
 3/16 SIGNED BY SPEAKER
 3/17 TRANSMITTED TO GOVERNOR
 3/22 SIGNED BY GOVERNOR
 CHAPTER NUMBER 247 EFFECTIVE DATE: 10/01/89

SB 324 INTRODUCED BY BECK, ET AL.
 PERMIT COURT TO CONDITIONALLY DISCHARGE PROBATIONER
 FROM SUPERVISION BEFORE HIS SENTENCE EXPIRES;
 PERMIT BOARD OF PARDONS TO CONDITIONALLY
 DISCHARGE PAROLEE FROM SUPERVISION BEFORE
 HIS SENTENCE EXPIRES

2/02 INTRODUCED
 2/02 REFERRED TO JUDICIARY
 2/06 HEARING
 2/06 COMMITTEE REPORT--BILL PASSED AS AMENDED
 2/09 2ND READING PASSED 50 0
 2/11 3RD READING PASSED 46 0

TRANSMITTED TO HOUSE
 2/21 REFERRED TO JUDICIARY
 3/02 HEARING
 3/02 COMMITTEE REPORT--BILL CONCURRED
 3/06 2ND READING CONCURRED 90 2
 3/07 3RD READING CONCURRED 93 2

RETURNED TO SENATE
 3/13 SIGNED BY PRESIDENT
 3/14 SIGNED BY SPEAKER
 3/15 TRANSMITTED TO GOVERNOR
 3/20 SIGNED BY GOVERNOR
 CHAPTER NUMBER 195 EFFECTIVE DATE: 10/01/89

SENATE BILL NO. 322
INTRODUCED BY VAN VALKENBURG, RAMIREZ

IN THE SENATE

FEBRUARY 2, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 6, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 7, 1989	PRINTING REPORT.
FEBRUARY 8, 1989	PASS CONSIDERATION.
FEBRUARY 9, 1989	SECOND READING, DO PASS.
FEBRUARY 10, 1989	ENGROSSING REPORT.
FEBRUARY 11, 1989	THIRD READING, PASSED. AYES, 46; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 11, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 20, 1989	FIRST READING.
MARCH 8, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 11, 1989	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 14, 1989	THIRD READING, CONCURRED IN. AYES, 98; NOES, 0.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 1, 1989

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 4, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MEDIA
5 CONFIDENTIALITY ACT BY PROVIDING THAT A PERSON WHO TESTIFIES
6 IN A LAWSUIT AGAINST A MEDIA ENTITY DOES NOT WAIVE THE
7 JOURNALIST PRIVILEGE; AND AMENDING 26-1-903, MCA."

22 (3) A person claiming the privilege who offers to
23 testify in connection with a lawsuit filed against a person
24 referred to in 26-1-902(1) does not waive the provisions of
25 26-1-902."



Montana Legislative Council

INTRODUCED BILL
SB 322

APPROVED BY COMMITTEE
ON JUDICIARY

1 *Senate* BILL NO. *322*
2 INTRODUCED BY *Van Valkenburg Ramsey*
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MEDIA
5 CONFIDENTIALITY ACT BY PROVIDING THAT A PERSON WHO TESTIFIES
6 IN A LAWSUIT AGAINST A MEDIA ENTITY DOES NOT WAIVE THE
7 JOURNALIST PRIVILEGE; AND AMENDING 26-1-903, MCA."

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 **Section 1.** Section 26-1-903, MCA, is amended to read:

11 "26-1-903. Waiver of privilege. (1) Dissemination,
12 except as provided in subsection (2), in whole or in part
13 does not constitute a waiver of provisions of 26-1-902.

14 (2) If the person claiming the privilege voluntarily
15 offers to testify or to produce the source, with or without
16 having been subpoenaed or ordered to testify or produce the
17 source, before a judicial, legislative, administrative, or
18 other body having the power to issue subpoenas or judicially
19 enforceable orders, he or it waives the provisions of
20 26-1-902. Except as provided in this subsection, the
21 provisions of 26-1-902 may not be waived.

22 (3) A person claiming the privilege who offers to
23 testify in connection with a lawsuit filed against a person
24 referred to in 26-1-902(1) does not waive the provisions of
25 26-1-902."

-End-



SECOND READING

SB 322

1 Senate BILL NO. 322
2 INTRODUCED BY Van Valkenburg Ramsey
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MEDIA
5 CONFIDENTIALITY ACT BY PROVIDING THAT A PERSON WHO TESTIFIES
6 IN A LAWSUIT AGAINST A MEDIA ENTITY DOES NOT WAIVE THE
7 JOURNALIST PRIVILEGE; AND AMENDING 26-1-903, MCA."

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15 offers to testify or to produce the source, with or without
16 having been subpoenaed or ordered to testify or produce the
17 source, before a judicial, legislative, administrative, or
18 other body having the power to issue subpoenas or judicially
19 enforceable orders, he or it waives the provisions of
20 26-1-902. Except as provided in this subsection, the
21 provisions of 26-1-902 may not be waived.

22 (3) A person claiming the privilege who offers to
23 testify in connection with a lawsuit filed against a person
24 referred to in 26-1-902(1) does not waive the provisions of
25 26-1-902."

-End-



THIRD READING
SB 322

STANDING COMMITTEE REPORT

March 7, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 322 (third reading copy -- blue) be concurred in as amended .

Signed: 
Dave Brown, Chairman

[REP. RAMIREZ WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Title, line 5.

Strike: "PROVIDING"

Insert: "CLARIFYING"

2. Title, lines 6 and 7.

Strike: "AGAINST" on line 6 through "PRIVILEGE" on line 7

Insert: "MAY WAIVE THE JOURNALIST SOURCE PRIVILEGE ONLY BY
VOLUNTARILY DISCLOSING THE SOURCE"

3. Page 1, lines 11 and 12.

Following: "(1)" on line 11

Strike: "Dissemination, except"

Insert: "Except"

4. Page 1, line 12.

Following: "(2),"

Insert: "dissemination"

5. Page 1, line 19.

Strike: "waives"

Insert: "does not waive"

6. Page 1, line 20.

Following: "26-1-902"

Insert: "unless the person voluntarily discloses the source"

7. Page 1, lines 22 through 25.

Strike: subsection (3) in its entirety

HOUSE

531031SC.HRT

SB 322

PT

COMMITTEE OF THE WHOLE AMENDMENT
SENATE BILL 322
Representative Jack Ramirez

March 11, 1989 8:39 am
Page 1 of 1

Mr. Chairman: I move to amend SENATE BILL 322 (third reading copy -- blue).

Signed: Ramirez
Representative Jack Ramirez

And, that such amendments to SENATE BILL 322, as amended by the House Committee on Judiciary 3/7/89, read as follows:

1. Page 1, lines 14 and 15.
Following: "privilege" on line 14
Strike: "voluntarily" on line 14 through "source" on line 15
Insert: "testifies"
2. Page 1, line 19.
Following: "he"
Strike: "or it"
3. Page 1, line 20 [as amended by the Judiciary Committee amendment No. 6].
Following: "voluntarily"
Insert: "agrees to waive the privilege or voluntarily"
Following: "source"
Insert: "in the course of his testimony"

ADOPT

REJECT

HOUSE

(R)

570838CW.HBV

SB 322

SENATE BILL NO. 322

INTRODUCED BY VAN VALKENBURG, RAMIREZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MEDIA CONFIDENTIALITY ACT BY PROVIDING CLARIFYING THAT A PERSON WHO TESTIFIES IN A LAWSUIT AGAINST-A-MEDIA-ENTITY--DOES--NOT WAIVE--THE--JOURNALIST--PRIVILEGE MAY WAIVE THE JOURNALIST SOURCE PRIVILEGE ONLY BY VOLUNTARILY DISCLOSING THE SOURCE; AND AMENDING 26-1-903, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 26-1-903, MCA, is amended to read:

"26-1-903. Waiver of privilege. (1) Dissemination, except EXCEPT as provided in subsection (2), DISSEMINATION in whole or in part does not constitute a waiver of provisions of 26-1-902.

(2) If the person claiming the privilege voluntarily offers-to-testify-or-to-produce-the-source TESTIFIES, with or without having been subpoenaed or ordered to testify or produce the source, before a judicial, legislative, administrative, or other body having the power to issue subpoenas or judicially enforceable orders, he or it waives DOES NOT WAIVE the provisions of 26-1-902 UNLESS THE PERSON VOLUNTARILY AGREES TO WAIVE THE PRIVILEGE OR VOLUNTARILY DISCLOSES THE SOURCE IN THE COURSE OF HIS TESTIMONY. Except

as provided in this subsection, the provisions of 26-1-902 may not be waived.

~~(3) A person claiming the privilege who offers to testify in connection with a lawsuit filed against a person referred to in 26-1-902(1) does not waive the provisions of 26-1-902.~~"

-End-

MINUTES

MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on February 6, 1989, at 10:00 a.m. in Room 325.

ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al Bishop, Senators Tom Beck, Mike Halligan, Bob Brown, Joe Mazurek, Loren Jenkins, R. J. "Dick" Pinsoneault, John Harp and Bill Yellowtail.

Members Excused: None.

Members Absent: None.

Staff Present: Staff Attorney Valencia Lane and Committee Secretary Rosemary Jacoby.

Announcements/Discussion: There were none.

HEARING ON SENATE BILL 322

Presentation and Opening Statement by Sponsor: Senator Fred VanValkenburg of Missoula, representing District 30, opened the hearing saying it was to revise the media confidentiality act by providing that a person who testifies in a lawsuit against a media entity does not waive the journalist privilege. It comes in answer to a supreme court decision in 1986, Sybil vs. Lee Enterprises, Don Schweneson, reporter for the Missoulian in Flathead County. This was a libel case and Judge Keating decided in the favor of the defendants, but it was overturned in appeal, he said. The Montana Supreme Court said that improper jury instructions had been given and Mr. Schweneson had waived the "shield" law by virtue of taking the witness stand in his own defense. Senator VanValkenburg stated there was a clear distinction in an individual voluntarily giving up a privilege and defending himself, where he does not exclusively give up

a privilege. He compared it to a priest giving up the confidentiality of a confessional.

List of Testifying Proponents and What Group they Represent:

Brad Hurd, Editor of the Missoulian
Gary Moseman, Great Falls Tribune
Charles Walk, Director, Montana Newspaper Association
Ian Marquand, KTVH Television Station and President,
Montana Chapter of Professional Journalists

List of Testifying Opponents and What Group They Represent:

None.

Testimony:

Brad Hurd said there were instances when a journalist must testify or subject himself to default judgement. His group maintains that is not the intent of the law and feel this bill would clarify the intent. He distributed Exhibit 1 to members of the committee entitled "SB 322 - A Bill to Revise the Media Confidentiality Act.

Gary Moseman said he felt this bill would expand the flexibility of news reporters. Much information is gathered with a confidential source and could be of use to others in a civil action, but the reporter is proscribed from testifying because he would be waiving his confidentiality privilege. He urged passage of the bill.

Charles Walk stated he represented the Montana Newspaper Association which included all 11 daily newspapers and 65 weekly newspapers in Montana. He stated he was also representing Mike Voeller of Lee Newspapers who was attending another hearing at the time. He urged support of the bill as drafted.

Ian Marquand said he represented the working journalists. He said he believed the bill would restore the original confidentiality act. He felt a reporter should be able to testify without losing the shield of confidentiality. It would enhance the status of a professional journalist, he said, and urged a Do Pass recommendation.

Questions From Committee Members: There were none.

Closing by Sponsor: The hearing closed.

DISPOSITION OF SENATE BILL 322

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Brown MOVED that Senate Bill 322 DO PASS. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 123

Presentation and Opening Statement by Sponsor: Representative Spaeth of Joliet, representing District 84, opened the hearing saying its purpose was adopting uniform enforcement of the Foreign Judgments Act.

List of Testifying Proponents and What Group they Represent:

Dean Bob Sullivan, retired dean of the UM Law School
Allen Chronister, Montana State Bar
Bill O'Leary, Montana Banking Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Dean Sullivan said he was one of the Uniform Commissioners of the state of Montana. The bill came out of the Uniform Laws Conference, was promulgated in 1964 and has been passed by 35 states. Each legislative year, the Commission presents suggested legislation to the governor and this was one of those bills, he said. He read from the report (Exhibit 2) and explained how it worked. He said the benefit to the state of Montana was that no second trial was necessary to enforce the judgment. Also, it should reduce the time for judgment and should reduce court congestion and delay. He encouraged passage of the bill.

Allen Chronister said the bill would aid both the courts and the practicing attorneys.

Bill O'Leary said the banking industry wished to appear as a proponent of the bill.

Questions From Committee Members: Senator Pinsoneault wondered if this law was reciprocal. Dean Sullivan said there was no reciprocal provision in the act. But, it is not necessary if dealing with a state that has the law on the books, he stated.

Senator Mazurek said there had been a concern regarding the bill if another state issued a default judgment on a Montana citizen, perhaps for a credit card issued in the other state. He wondered if there should be concern. Dean Sullivan didn't think Montana people would have a lot to fear in the act because, if there were reasons for "staying," they can be filed in a judgment proceeding. He said the scenario could happen, but he didn't think it was likely.

Senator Bishop asked about Section 2 on page 2, the word "promptly". He wondered if the debtor would be notified before someone executed judgment against them. Dean Sullivan said the act provides that a judgment can be filed in the court with the clerk of court giving notice. In the alternative, the judgment creditor could give notice to the debtor. So, he said, adequate notice would be given.

Closing by Sponsor: The sponsor closed the hearing.

DISPOSITION OF HOUSE BILL 123

Discussion: Senator Bishop asked further about the use of the word "promptly". He said it was conceivable that the filed execution at the same time they received the notice. He felt "promptly" was not specific. He felt the judgment debtor may need more time than given.

Amendments and Votes: None

Recommendation and Vote: Senator Mazurek MOVED that HOUSE BILL 123 DO PASS. After Senator Bishop's question on the word "promptly," Senator Mazurek WITHDREW his motion.

HEARING ON HOUSE BILL 107

Presentation and Opening Statement by Sponsor: Representative Gary Spaeth of Joliet, District 84, said the bill was to

raise the justice's court filing fee from \$10 to \$25 when filing a complaint in a civil instance, and when filing in a claims court from \$5 to \$10. The county officials in his county thought that the fees were too low considering the caseload and the time spent running the justice court. Last session, the district court filing fees were raised to \$60. This raise would keep the fees current, he thought, as they hadn't been raised in quite some time. They didn't come close to paying for costs or keeping up with inflation, but would help some, he said.

List of Testifying Proponents and What Group they Represent:

None

List of Testifying Opponents and What Group They Represent:

None

Testimony:

There was none.

Questions From Committee Members: Senator Halligan said this bill had been proposed last session, but it was felt that raising the fees might discourage people, particularly landlords, from using small claims court. Rep. Spaeth said that hadn't been mentioned to him. People in collections were the ones he spoke to and they said they had no problem with the raise in fees. Some of the justices of peace wanted to raise all fees in the specific section of statute, but he preferred not to do that. The bill originally had asked a raise from \$5 to \$15, but eventually was changed to \$10.

Senator Pinsoneault asked if the money was used to defray court costs. Rep. Spaeth said it stayed in the county coffers. He said the Montana Association of Counties had not been able to come to the hearing, but did appear in favor of the bill in the House.

Senator Crippen said he understood that Judge Hernandez in Billings was interested in the bill. Rep. Spaeth said that he had heard from 3 or 4 justices.

Closing by Sponsor: Representative Spaeth closed the hearing.

DISPOSITION OF HOUSE BILL 107

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Harp MOVED that House Bill 107 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HEARING ON SENATE BILL 324

Presentation and Opening Statement by Sponsor: Senator Tom Beck of Deer Lodge, District 24, saying that Senate Bill 324 was Recommendation #7 coming from the interim study on criminal control and corrections. The bill proposes to discharge a probationer from supervision before the expiration of his sentence, to release some of the burden of the parole officers across the state. He distributed some amendments he proposed to the committee (See Exhibit 3) and said they asked the board of pardons to "conditionally" discharge a man from his probationary period.

List of Testifying Proponents and What Group they Represent:

Nick Rotering, Attorney for the Department of Institutions
Dan Russell, Administrator, Corrections Division and a member of the Governor's Council of Criminal Justice and Corrections.

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Nick Rotering said it would authorize a practice that has been "ongoing" for a number of years regarding probationers and parolees. It is not uncommon for a sentence to have suspended time which is quite often supervised, but in many cases not necessary. The practice relieves parole officers of an unnecessary load.

Dan Russell said the bill provides statutory authority for a long-standing practice. The practice is used most frequently when other states are supervising our people and recommend that supervision be discontinued. If the

person has repaid all restitution, has secure employment and good family relationships, it is felt they he can be discharged from frequent checks. He still must report annually and would still be subject to revocation for any violation of the law. There are currently 39 individuals on conditional supervision out of a total caseload of 3200. These people served 4 1/2 years in prison and had an average sentence length of 26 years. Only about one request per year is received, he said, and he supported the bill.

Questions From Committee Members: There were none

Closing by Sponsor: The hearing was closed by the sponsor.

DISPOSITION OF SENATE BILL 324

Discussion: None

Amendments and Votes: Senator Mazurek MOVED that Senator Beck's amendments be accepted by the committee for the bill. The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Mazurek MOVED that Senate Bill 324 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

DISCUSSION OF SENATE BILL 255

Senator Harp said some amendments were being prepared for the bill and should be ready tomorrow.

DISPOSITION OF SENATE BILL 273

Discussion: Senator Crippen said this bill was a constitutional amendment and there was some concern whether or not the committee could kill the bill. Senator Pinsoneault said he had an amendment for the bill which had been distributed to the committee on February 3. He asked the committee to refer to the amendment. He said that the amendment would prevent the governor from removing an appointee until he had served out two years of his term.

Senator Jenkins said a House bill would be coming to the Senate asking for a 4-year term.

Senator Pinsoneault said that, when a person is appointed, it was hoped that he would serve the term. The governor appoints people he hopes share some of his attitudes and philosophy.

If the appointee and the governor find they do not agree, the governor should have the option of removing, Senator Pinsoneault thought.

Senator Mazurek applauded Senator Pinsoneault's efforts but didn't think the amendment solved the problem with the bill. He felt the constitution was drafted as it was to remove the situation from politics. Senator Pinsoneault thought the governor should be allowed to govern. Senator Bishop said he felt the bill would stifle the members of the Board of Regents.

Amendments and Vote: Senator Pinsoneault MOVED his amendment. After discussion, the amendment was voted upon and CARRIED by a 8 to 2 vote with Senators Yellowtail and Beck voting NO.

Recommendation and Vote: Senator Beck MOVED that Senate Bill 273 DO NOT PASS. Senator Pinsoneault MOVED A SUBSTITUTE MOTION of DO PASS. Senator Mazurek MOVED a SUBSTITUTE MOTIONS for all motions pending of TABLING the bill as amended. The MOTION CARRIED by a vote of 6 to 4, with Senators Harp, Jenkins, Pinsoneault and Crippen voting NO.

DISPOSITION OF SENATE BILL 241

Recommendation and Vote: Senator Mazurek MOVED that Senate Bill 241 DO PASS. The MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment At: 11:00 a.m.



SENATOR BRUCE CRIPPEN, Chairman

ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 2-6-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

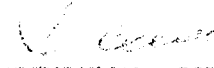
February 6, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 322 (first reading copy -- white), respectfully report that SB 322 do pass.

DO PASS

Signed



Bruce D. Crippen, Chairman

4/16/89
2/16/89

SENATE STANDING COMMITTEE REPORT

February 6, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 107 (third reading copy -- blue), respectfully report that HB 107 be concurred in.

Sponsor: Spach (Jenkins)

BE CONCURRED IN

Signed: 

Bruce D. Crippen, Chairman

4/6
2/6/89
3:42 p.m.

SENATE STANDING COMMITTEE REPORT

February 6, 1939

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 324 (first reading copy -- white), respectfully report that SB 324 be amended and as so amended do pass:

1. Title, line 4.
Following: "TO"
Insert: "CONDITIONALLY"
2. Title, line 6.
Following: "TO"
Insert: "CONDITIONALLY"
3. Page 2, line 12.
Following: "may"
Insert: "conditionally"
4. Page 2, line 14.
Following: "that"
Insert: "a conditional"
5. Page 2, line 19.
Following: "been"
Insert: "conditionally"
6. Page 3, line 18.
Following: "may"
Insert: "conditionally"
7. Page 3, line 20.
Following: "that"
Insert: "a conditional"
8. Page 3, line 24.
Following: "been"
Insert: "conditionally"

AND AS AMENDED DO PASS

Signed, 

Bruce D. Crippen, Chairman

M.C.
2/6/39
2:40
P.M.

SENATE STANDING COMMITTEE REPORT

February 6, 1969

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 241 (first reading copy -- white), respectfully report that SB 241 do pass.

DO PASS

Signed: 
Bruce D. Crippen, Chairman

Handwritten notes:
J. C. 151
316 111
J. 241

Brad Nurd

SENATE JUDICIARY
EXHIBIT NO. 1 *PL*
DATE 2-6-89
BILL NO. SB 322

SB 322--A BILL TO REVISE THE MEDIA CONFIDENTIALITY ACT

The Media Confidentiality Act is generally referred to as a "shield law". Twenty-six states, including Montana, has such a law.

The intent of the Media Confidentiality Act is to protect news organizations from having to give certain information to litigants. It protects confidential information, sources, reporter's notes and unpublished materials.

Recently, New York State's highest court, the New York Court of Appeals, unanimously backed a news organization's First Amendment claim that it should not have to share its unpublished information with litigants. In O'Neill v. Oak Grove Construction, Inc., et al., 523 N.E.2d (1988), the court stated, "[t]he practical burden on time and resources, as well as the consequent diversion of journalistic effort and disruption of news gathering activity, would be particularly inimical to the vigor of a free press." That decision echoes many others across the country which have determined that a news organization's unpublished material is akin to an attorney's work product and should remain privileged.

SB 322 would restore the privilege intended by the Media Confidentiality Act. The privilege was severely restricted in a decision by the Montana Supreme Court. In Sible v. Lee Enterprises et al., 729 P.2d 1271 (1986), Justice Frank Morrison determined that a reporter waived his privilege to keep his notes confidential once the reporter agreed to testify in

deposition or at trial.

Under the court's interpretation of the statute, the only way a reporter could invoke the privilege is if he or she refused to testify, even if subpoenaed, and face a default judgment. SB 322 restores the protection the Media Confidentiality Act was intended to provide.

*Dean Sullivan
read from 4,*

SENATE JUDICIARY

ENACT NO. 2, P. 1

DATE 2-6-87

BILL NO. HB 123

Reciprocal Enforcement of Support
Residential Landlord and Tenant
Rights of Terminally Ill
Simplification of Fiduciary Security Transfers
Simultaneous Death
Status of Convicted Persons
Testamentary Additions to Trusts
Trade Secrets
Transboundary Pollution Reciprocal Access
Transfers to Minors
Trustees Powers
Unclaimed Property

MODEL ACTS

Administrative Procedure
Audio-Visual Deposition (By Supreme Court Rule)

VII. RECOMMENDATIONS FOR ENACTMENT BY 1989 LEGISLATURE

1. Criminal History Records Act. Governs the gathering, maintenance, and disclosure of information on the arrest, prosecution, sentencing and punishment of specific individuals as collected by law enforcement agencies and establishes a central repository for gathering this information from all law enforcement agencies in a state. The act provides for varying levels of access to the information.
2. Disposition of Community Property at Death. Deals with the subtle problem of community property brought into a non-community state, one of life's complications which lawyers would like to pretend does not exist. The act requires that, upon death, assets must be traced to their community of origin, if any.
3. Dormant Mineral Interests. Establishes the criteria by which a severed mineral interest in real estate becomes dormant. Once a mineral interest becomes dormant, it may be merged with the surface interest in an action to quiet title. A mineral interest becomes dormant if there is no actual "use" of the interest for twenty years or more. The term "use" means exploring for or taking minerals, generally, but includes such exercises of ownership as paying taxes on the interest or recording a judgment pertaining to it, as well. Even if a holder of a mineral interest does not use it, the interest can be kept current by filing a "notice of intent to preserve" in the real property records.
4. Enforcement of Foreign Judgments. Article IV, Section 1, of the Constitution of the United States requires each state to give full faith and credit to the official acts and judgments of every other state. The "full faith and

credit" clause unites the states in a very practical way and is meant to prevent abuses of jurisdiction experienced during the period of time when the original states were under the Articles of Confederation. Even though "full faith and credit" is mandatory, the states have never wholly resolved the problem of its implementation. The Act settles one of the problems of states' complying with the U.S. Constitution's full faith and credit clause. It permits enforcement of a judgment of another state upon the mere act of filing it in the office of a Clerk of Court. The act of filing the foreign judgment gives it the effect of being a judgment of the court in the state in which it is filed. The process of enforcement then goes forward as if the judgment were a domestic one.

5. Fraudulent Transfers. Revises the Uniform Fraudulent Conveyance Act of 1918. Creates a class of transfers of property by debtors that is fraudulent to creditors. This class of transfers would, generally, have the effect of depriving creditors of assets that would, otherwise, be available to satisfy debts when the debtor becomes insolvent or is about to become insolvent. Transfers that are intended to defraud creditors, that are made "without receiving reasonably equivalent value" to make the debtor "judgment proof", or that are made "without receiving reasonably equivalent value" when the debtor is insolvent are examples of fraudulent transfers. Such transfers are generally voidable on behalf of creditors. The new Act is more specific on what constitutes fraud and introduces new law on "insider" transactions and on the effect of fraudulent transfers on innocent transferees.

6. Statutory Rule Against Perpetuities. Validates nonvested future interests in property as the common-law "Rule Against Perpetuities" does, by measuring the time for vesting in terms of lives in being plus 21 years. In contrast to the common-law Rule, the Statutory Rule does not invalidate future interests that may, even against enormous probabilities, not vest within the prescribed time. The Uniform Rule provides a 90-year period in which de facto vesting of an interest can take place. If an interest actually vests within the 90 years, it is valid, even though its vesting is not, hypothetically, an absolute certainty at the time the future interest is created. The Rule also provides a procedure by which a court may vest interests within the allotted 90-year time to avoid invalidity. In addition, the Rule carefully sets out the kinds of interests that are excluded from the operation of the Perpetuities Rule.

7. Anatomical Gift (1987). The 1987 revision of the original 1969 Uniform Anatomical Gift Act retains the principal provisions of the earlier Act, that of a "document of gift" which permits any competent adult to

Amendments to Senate Bill No. 324
First Reading Copy

Requested by Senator Tom Beck
For the Senate Judiciary Committee

Prepared by Lois Menzies
February 5, 1989

1. Title, line 4.
Following: "TO"
Insert: "CONDITIONALLY"
2. Title, line 6.
Following: "TO"
Insert: "CONDITIONALLY"
3. Page 2, line 12.
Following: "may"
Insert: "conditionally"
4. Page 2, line 14.
Following: "that"
Insert: "a conditional"
5. Page 2, line 19.
Following: "been"
Insert: "conditionally"
6. Page 3, line 18.
Following: "may"
Insert: "conditionally"
7. Page 3, line 20.
Following: "that"
Insert: "a conditional"
8. Page 3, line 24.
Following: "been"
Insert: "conditionally"

ROLL CALL VOTE

JUDICIARY

enate Bill No. 273 Time [#]1

	YES	NO
	✓	
		✓
	✓	
	✓	
	✓	
	✓	
	✓	
	✓	
		✓
	✓	

8 . to 2

Sen. Bruce Crippen
Chairman

Amend. - Passed 8 to 2

No. 273 Time [#]2

	YES	NO
	✓	
	✓	
	✓	
	✓	
		✓
		✓
	✓	
		✓
	✓	
		✓

6 . to 4

Bruce Crippen
man

tion - Do Pass
nded - 6 to 4

Amendments to Senate Bill No. 273
First Reading Copy (WHITE)

Requested by Senator Pinsoneault
For the Committee on Judiciary

Prepared by Valencia Lane
February 2, 1989

1. Title, line 6.

Following: "GOVERNOR"

Insert: ", WITH RESTRICTIONS,"

2. Page 2, lines 5 and 6.

Following: "law."

Strike: remainder of line 5 through "governor." on line 6

3. Page 2, line 8.

Insert: "(c) The governor may, in his discretion and not less than
2 years after a member is confirmed by the senate, remove a
member of the board and appoint a replacement."

Renumber: subsequent subsections

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Brown, on March 7, 1989, at 8:05 a.m.

ROLL CALL

Members Present: All except:

Members Excused: Rep. Hannah

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: None.

HEARING ON SENATE 322

Presentation and Opening Statement by Sponsor:

Sen. Fred Van Valkenburg, District 30, stated that SB 322 would respond to a Supreme Court decision from late 1986 which changed a journalist's privilege of nondisclosure of confidential sources. The Court ruled in Sible vs. Lee Enterprises that said if a news entity or reporter is sued and in the course of defending that lawsuit, takes the witness stand, then that person waives the privilege of nondisclosure of a confidential source. Our forefathers recognized the need for an active, involved and free press and put a provision in our constitution (the first amendment) which guarantees the right of a free press. It has served our country well even though there have been difficulties at times. The press must be able to protect the confidentiality of its sources and should not be subject to coercive attempts to force disclosure. This bill has broad support from the media and no opposition in the Senate. Rep. Ramirez (co-sponsor) has prepared an amendment.

Testifying Proponents and Who They Represent:

Mike Voeller, Lee Newspapers
Brad Hurd, Editor, Missoulian
Gary Moseman, Editor, Great Falls Tribune
Charles Walk, Executive Director, Montana Newspaper Association
Ian Marquand, News Director, KTVH; President, Society of Professional Journalists

Proponent Testimony:

Mike Voeller expressed support for the bill and proposed an amendment presented as EXHIBIT 1. A copy of the bill as it would read with the amendment was also presented (EXHIBIT 2). Rep. Ramirez requested the amendment because he felt that the bill presently is too strong in that it gives the reporters absolute privilege. He felt that the privilege should be that you have it unless you waive it.

Brad Hurd stated that this bill is not a radical change but a clarification of the media confidentiality act. As the Supreme Court decision can be read presently, a reporter testifying on his own behalf would have to divulge unpublished material, unnamed sources and reporter's notes. Refusal would subject the reporter to a default judgment. He presented a memo to the committee that speaks of the Media Confidentiality Act (EXHIBIT 3).

Gary Moseman testified in support of SB 322. It is important to note that this is not an expansion of any rights but flexibility to participate more fully in court proceedings. The case cited is related to a reporter's ability to take the stand on his own behalf but it could also happen that a reporter would be asked to take the stand as a third party in a criminal or civil proceeding in which he would also face the same conditions.

Charles Walk expressed support for SB 322 and its' amendment. The bill will strengthen the legislative intent of 26-1-903 as it applies to 26-1-902. Since the first Media Confidentiality Act (Shield Law), development and refinement of the act are meaningful. SB 322 is a major step in this process involving the Montana Media Confidentiality Act and urged DO PASS.

Mr. Marquand spoke on behalf of the Society of Professional Journalists. He concurred with previous testimony. Montana's present law has been a source of justifiable pride among the journalist community. The Supreme Court decision revealed a flaw and this bill will correct that flaw. He urged support of the amendment and of the bill.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Gould asked Sen. Van Valkenburg about a reporter having to prove a statement made by a reporter. Sen. Van Valkenburg responded that the libel laws remain in place. This bill will not have any affect on the libel laws.

Rep. Eudaily asked Sen. Van Valkenburg what the heading of the section referred to in the bill (902). Sen. Van Valkenburg stated that 902 sets out what the shield law is and 903 talks about the waiver of that privilege.

Rep. Addy asked Sen. Van Valkenburg if this case arose because the person voluntarily testified. Sen. Van Valkenburg stated that the person was being sued and testified in the process of defending the lawsuit.

Closing by Sponsor: Sen. Van Valkenburg speculated that some may be uncomfortable with confidential sources but stated that there are occasionally circumstances where that is the only way in which important information can come to light so that people are protected from retaliation.

DISPOSITION OF SENATE BILL 322

Motion: Rep. Addy moved the SB 322 BE CONCURRED IN. Seconded by Rep. Mercer.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Addy moved the amendment. Rep. Mercer did not think the bill will worded very well. The bill should be reworded and made simpler. The portion of the bill about when the privilege can be waived and suggested language of "the provisions of 26-1-902 may not be waived unless the person voluntarily discloses the source". Rep. Brooke asked if it would be the same type of thing as the open meeting law where you just waive your privilege. She understood that the Supreme Court ruling meant that once a person takes the stand then the privilege is waived and this bill is attempting to be sure that section 26-1-902 is still valid even after taking the stand. Rep. Brown suggested language from John MacMaster: "The provisions of 26-1-902 may only be waived by voluntary disclosure of the source". Rep. Mercer still felt the language in the bill was "terrible".

Chairman Brown decided that executive action on the bill will be continued tomorrow.

Recommendation and Vote: No further action taken. HOLDING.

HEARING ON SENATE BILL 347

Presentation and Opening Statement by Sponsor:

Sen. Fred Van Valkenburg, District 30, stated that this bill was introduced to put into statute the rules of criminal procedure that have been proposed by a committee of the state bar that has been examining and working criminal statutes for the last four years. This body, chaired by Robert Deschamps, was directed by the Montana Supreme Court to review our existing statutes. The group submitted the suggested changes to the court who decided to defer to the Legislature for consideration. The Montana Criminal Procedure Commission would like action on this bill delayed because some problem areas have arisen and the time would give the commission a chance to recommend changes. There are no significant changes being proposed but the bill will clarify a number of areas.

Testifying Proponents and Who They Represent:

Robert L. Deschamps, Chair, Montana Criminal Procedure Commission
John Connor, Department of Justice, Montana County Attorneys
Association, Montana Attorney General
Mike Sherwood, Montana Trial Lawyers Association
Wally Jewell, Montana Magistrates Association

Proponent Testimony:

Robert Deschamps stated that this bill was initiated by the Montana Supreme Court with an eye toward modernizing and turning into a rule form the criminal procedure in the State of Montana. The federal government and most states have rules rather than statutes regarding criminal procedures. The only significant objection that they have received is from groups that were concerned about the changes in the spouse abuse legislation that was passed by the last legislature. They met with the group and made changes and put many of those changes in the proposal. Because some groups have requested minor changes, he, too, asked the committee to take action on the bill later.

John Connor concurred with Mr. Deschamps testimony. The attorney for the Senate Judiciary pointed out that some statutes in this bill would be repealed. He obtained a list of all bills pending that would be affected by this bill to be sure that repeals would not be made by reference.

Mike Sherwood stated that, as a young defense attorney, most case law was spread throughout Montana Code. This bill would make it easier to find the laws relative to certain cases. Though he did not like all of the sections of the bill, he urged passage of the bill as a whole. He urged the committee to give the commission more time to fine tune the

bill.

Wally Jewell expressed support for this bill and asked for more time until further work can be completed on the bill.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Eudaily asked Sen. Van Valkenburg asked kinds of rules were being used presently. Sen. Van Valkenburg stated that they are operating under a combination of statutes and case law that has developed over time. There are no rules of criminal procedure. There are rules of civil procedure and the federal government has both civil and criminal procedure rules. Not only would this bill modernize the statutes but would provide a method for the future for changes. The effective date is later when the legislature handles it than it would be if the Supreme Court had enacted the rule changes.

Closing by Sponsor: Sen. Van Valkenburg closed.

Chairman Brown stated that the bill will be placed in a subcommittee and he counseled them not to meet until the commission is in agreement on the additional changes. Rep. Strizich, chair, Rep. Nelson and Rep. Rice will compose the committee.

HEARING ON SENATE 258

Presentation and Opening Statement by Sponsor:

Sen. Pinsoneault, District 27, stated this bill is by request of the Board of Pardons. This bill does not relate to any part of the trial process. The trial has been completed, the prisoner has been sentenced and, under present law, having served a certain period of time, the prisoner becomes eligible for parole. SB 258 tries to give the Board of Pardons more discretion by changing "shall" to "may" in section 2. Section 1 provides that the decision by the Board of Pardons must be by majority vote and that is not appealable. What has been occurring is that a prisoner had met the statutory criteria, he could go through the administrative procedure act and then into the district court. Under this bill that would be eliminated. The prisoner would still have a right under equal protection issues that he could bring before a district court on a writ of habeas corpus. Section 3 helps clarify the problem of concurring sentences of a new crime.

Testifying Proponents and Who They Represent:

Nick Rotering, Board of Pardons' Attorney, Department of
Institutions' Chief Counsel

Proponent Testimony:

Nick Rotering stated that this bill is a recommendation of the Criminal Advisory Justice Committee that studied problems of prison overcrowding. It also coincides with the US Supreme Court decision that was handed down a year ago (Allen vs. Burgess). Essentially, SB 258 is a request for three items. Section 1 indicates that the decisions of the Board of Pardons will be made by a majority vote and that the decisions are final and not reviewable under the Administrative Procedures Act. Section 2 is the means of addressing the Supreme Court decision by deleting "shall" and inserting "may. It will give the Board of Pardons and the State further discretion on whether or not a parole will be granted. Section 3 clarifies the eligibility of the prisoner for parole for his first offense after he has been convicted and returned to prison on another offense (EXHIBIT 4). The Senate Judiciary Committee deleted a portion of the bill that made the bill retroactive and he agreed with that move.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Boharski asked Mr. Rotering if he would clarify section 3. Mr. Rotering explained that the board can revoke the parole on a first offense after he has been returned to prison because of a second violation while on parole. The terms presently must be served consecutively. This bill would allow the person to be paroled to begin serving time on the second offense. He doesn't leave prison but serves time on the second sentence sooner.

Rep. Gould asked Mr. Rotering if this bill would affect the number of people that the parole officers are going to have in their caseload. Mr. Rotering said that if the board is given the discretion to parole in section 3, it is possible that a man could be paroled and would increase the caseload for officers. Mr. Rotering thought that there was an increase in field services budget for the department. He was not positive though.

Closing by Sponsor: Sen. Pinsoneault remarked that this bill is not trying to restrict when the prisoner becomes eligible for parole. The Board should be given the discretion necessary to avoid cluttering the process with frivolous appeals.

DISPOSITION OF SENATE BILL 258

Motion: Rep. Addy moved that SB 258 BE CONCURRED IN. Rep. Gould seconded.

Discussion: Rep. Boharski expressed concern with section 3. It is a substantial change. John MacMaster, Rep. Gould and Rep. Brown explained the section to him.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: The motion that SB 258 BE CONCURRED IN CARRIED with Reps. Boharski and Wyatt seconded.

HEARING ON SENATE BILL 312

Presentation and Opening Statement by Sponsor:

Sen. Dick Pinsoneault, District 27, stated that primary sponsors of SB 312 have requested that the bill be tabled.

Testifying Proponents and Who They Represent:

None.

Proponent Testimony:

None.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: None.

Closing by Sponsor: Sen. Pinsoneault closed.

DISPOSITION OF SENATE BILL 312

Motion: Rep. Addy moved the SB 312 be TABLED. Rep. Gould seconded.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: The motion to TABLE CARRIED with Rep. Boharski.

HEARING ON SENATE BILL 21

Presentation and Opening Statement by Sponsor:

Sen. John Harp, District 4, stated that SB 21 is a request from the Department of Revenue that allows peace officer status for people in the department who are investigating fraud in public assistance (AFDC, food stamps and Medicaid). The department's Investigations Bureau currently is responsible for referring such fraud to the county attorneys for prosecution. They are not presently authorized to issue a warrant. Peace officer status would give them that ability so local jurisdictions do not have to follow up on investigations already done. There is an increase in such fraud in Montana. The Department of Revenue already has this status in two areas: gaming industry and tobacco areas.

Testifying Proponents and Who They Represent:

Rick Day, Investigation Bureau, Department of Revenue
Robert L. Deschamps III, Missoula County Attorney

Proponent Testimony:

Rick Day expressed support for SB 21 and stated that this bill is not a major change in their authority. The change requires no additional staff and is designed only to increase their effectiveness primarily by allowing them to serve notices to appear and arrest warrants generated by county attorneys. It should eliminate the delay caused by the heavy workloads of local law enforcement but the public sees quicker action and sanctions in the area of public assistance fraud.
EXHIBIT 5.

Robert Deschamps stated that he supports this bill because it makes good sense. The county authorities are spread extremely thin and they need all the help they can get.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: None.

Closing by Sponsor: Sen. Harp closed.

DISPOSITION OF SENATE BILL 21

Motion: Rep. Mercer moved that SB 21 BE CONCURRED IN. Rep. Addy seconded.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: The motion that SB 21 be recommended BE CONCURRED IN CARRIED with Reps. Wyatt and Brooke opposing.

Rep. Mercer will carry the bill on the house floor.

EXECUTIVE ACTION

DISPOSITION OF SENATE BILL 84

Rep. Brown stated that amendments have been suggested.

Motion: Rep. Darko moved that SB 84 BE CONCURRED IN. Seconded by Rep. Gould.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Darko moved the suggested amendments. Rep. Eudaily seconded.

Rep. Eudaily stated that this amendment does what the sponsor intended.

Rep. Mercer felt that the amendment is beyond the scope of the bill. If this is part of the sentence then it is only restricted to that period of time.

Rep. Strizich stated that as a practical matter the probation and supervision becomes a self-supervised situation but that does not mean that a person cannot be found in violation of his probation or parole.

Rep. Darko stated that the most overpowering reason for such controls is because testimony showed that these people are not in control of themselves. They perform better in controlled situations.

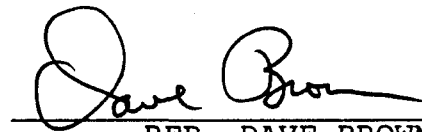
Rep. Boharski made a substitute motion to change "shall" to "may" in the amendment. Rep. Rice seconded. The motion FAILED with Reps. Boharski and Rice voting in favor.

The motion to amend as moved by Rep. Darko CARRIED with Reps. Mercer, Knapp, McDonough and Boharski opposing.

Recommendation and Vote: Rep. Darko moved that SB 84 BE
CONCURRED IN CARRIED unanimously.

ADJOURNMENT

Adjournment At: 9:30 a.m.



REP. DAVE BROWN, Chairman

DB/td

5308.MIN

DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date MARCH 7, 1989

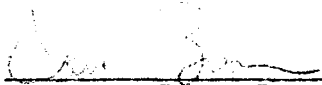
NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH			X
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

STANDING COMMITTEE REPORT

March 7, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
Senate Bill 258 (third reading copy -- blue) be concurred in.

Signed: 
Dave Brown, Chairman

[REP. GOULD WILL CARRY THIS BILL ON THE HOUSE FLOOR]

3-7-89



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE DAVE BROWN

HOUSE DISTRICT 72

HELENA ADDRESS:
CAPITOL STATION
HELENA, MONTANA 59620

HOME ADDRESS:
3040 OTTAWA
BUTTE, MONTANA 59701
PHONE: (406) 782-3604

COMMITTEES:
JUDICIARY, CHAIRMAN
LOCAL GOVERNMENT
RULES

TO: John Vincent, Speaker of the House
FROM: Dave Brown, Chairman, House Judiciary Committee *df*
DATE: March 7, 1989
SUBJECT: Senate Bill 312

The House Judiciary Committee has TABLED Senate Bill 312.

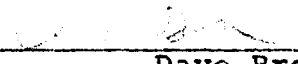
DB/je

STANDING COMMITTEE REPORT

March 7, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
Senate Bill 21 (third reading copy -- blue) be concurred in .

Signed: 
Dave Brown, Chairman

[REP. MERCER WILL CARRY THIS BILL ON THE HOUSE FLOOR]

STANDING COMMITTEE REPORT

March 7, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that SENATE BILL 84 (third reading copy -- blue) be concurred in as amended.

Signed: _____
Dave Brown, Chairman

[REP. _____ WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Page 2, line 1.

Following: "45-5-507"

Insert: "(unless the act occurred between 2 consenting persons 16 years of age or older)"

2. Page 4, line 2.

Strike: "Liability for noncompliance with"

Insert: "A convicted sexual offender's duty to register under"

3. Page 4, lines 13 through 21.

Strike: "EMPLOYMENT" on line 13 through end of line 21

Insert: "Sentence upon conviction--restriction on employment.
A judge sentencing a person upon conviction of a sexual offense shall, as a condition to probation, parole, or deferment or suspension of sentence, impose upon the defendant reasonable employment or occupational prohibitions and restrictions designed to protect the class or classes of persons containing the likely victims of further offenses by the defendant."

1
DATE 3/7/89
SB 322

Amendments to Senate Bill No. 322
Third Reading Copy

Requested by Rep. Jack Ramirez
For the Committee on the Judiciary

March 6, 1989

1. Title, line 5.

Strike: "PROVIDING"

Insert: "CLARIFYING"

2. Title, lines 6 and 7. 6

Strike: "AGAINST" on line 6 through "PRIVILEGE" on line 7

Insert: "MAY WAIVE THE JOURNALIST SOURCE PRIVILEGE ONLY BY
VOLUNTARILY DISCLOSING THE SOURCE"

3. Page 1, lines 11 and 12.

Following: "(1)" on line 11

Strike: "Dissemination, except"

Insert: "Except"

4. Page 1, line 12.

Following: "(2),"

Insert: "dissemination"

5. Page 1, line 19.

Strike: "waives"

Insert: "does not waive"

6. Page 1, line 20.

Following: "26-1-902"

Insert: "unless the person voluntarily discloses the source"

7. Page 1, lines 22 through 25.

Strike: subsection (3) in its entirety

2
3/7/89
SB 322

SENATE BILL 322 AS AMENDED WOULD READ AS FOLLOWS:

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MEDIA CONFIDENTIALITY ACT BY CLARIFYING THAT A PERSON WHO TESTIFIES IN A LAWSUIT MAY WAVE THE JOURNALIST SOURCE PRIVILEGE ONLY BY VOLUNTARILY DISCLOSING THE SOURCE, AND AMENDING 26-1-903, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

SECTION 1. Section 26-1-903, MCA, is amended to read:

"26-1-903. Waiver of privilege. (1) Except as provided in subsection (2), dissemination in whole or in part does not constitute a waiver of provisions of 26-1-902.

(2) If the person claiming the privilege voluntarily offers to testify or to produce the source, with or without having been subpoenaed or ordered to testify or produce the source, before a judicial, legislative, administrative, or other body having the power to issue subpoenas or judicially enforceable orders, he or it does not waive the provisions of 26-1-902, unless the person voluntarily discloses the source. Except as provided in this subsection, the provisions of 26-1-902 may not be waived.

Strike: subsection (3) in its entirety.

EXHIBIT 3
DATE 3/7/89
SB 322

SB 322--A BILL TO REVISE THE MEDIA CONFIDENTIALITY ACT

The Media Confidentiality Act is generally referred to as a "shield law". Twenty-six states, including Montana, has such a law.

The intent of the Media Confidentiality Act is to protect news organizations from having to give certain information to litigants. It protects confidential information, sources, reporter's notes and unpublished materials.

Recently, New York State's highest court, the New York Court of Appeals, unanimously backed a news organization's First Amendment claim that it should not have to share its unpublished information with litigants. In O'Neill v. Oak Grove Construction, Inc., et al., 523 N.E.2d (1988), the court stated, "[t]he practical burden on time and resources, as well as the consequent diversion of journalistic effort and disruption of news gathering activity, would be particularly inimical to the vigor of a free press." That decision echoes many others across the country which have determined that a news organization's unpublished material is akin to an attorney's work product and should remain privileged.

SB 322 would restore the privilege intended by the Media Confidentiality Act. The privilege was severely restricted in a decision by the Montana Supreme Court. In Sible v. Lee Enterprises et al., 729 P.2d 1271 (1986), Justice Frank Morrison determined that a reporter waived his privilege to keep his notes confidential once the reporter agreed to testify in

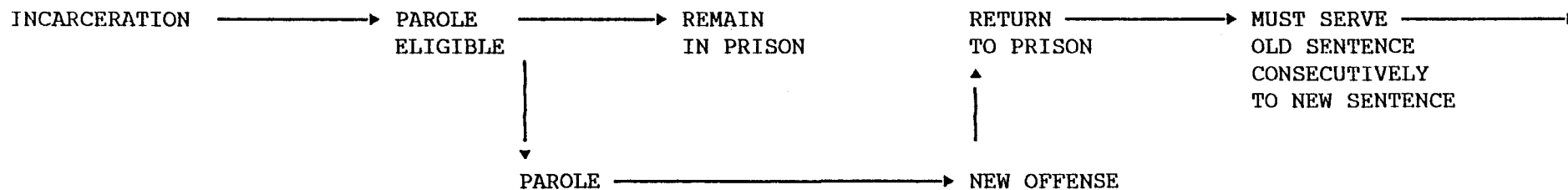
EXHIBIT 3
DATE 3-1-89
#SB 322

deposition or at trial.

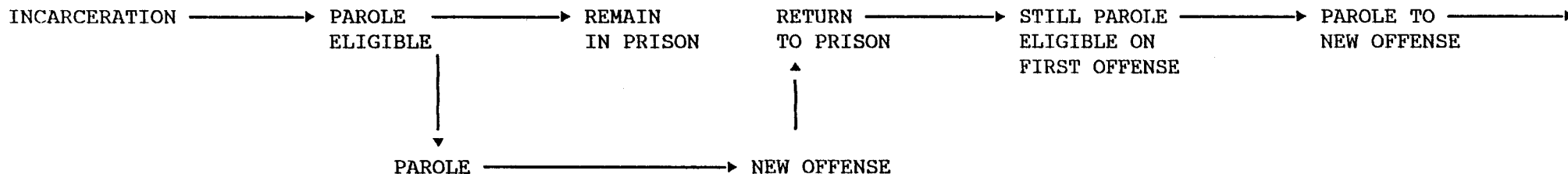
Under the court's interpretation of the statute, the only way a reporter could invoke the privilege is if he or she refused to testify, even if subpoenaed, and face a default judgment. SB 322 restores the protection the Media Confidentiality Act was intended to provide.

PRESENT LAW

SENATE BILL 258



NEW PROPOSAL
SECTION 3 OF SB 258



OR

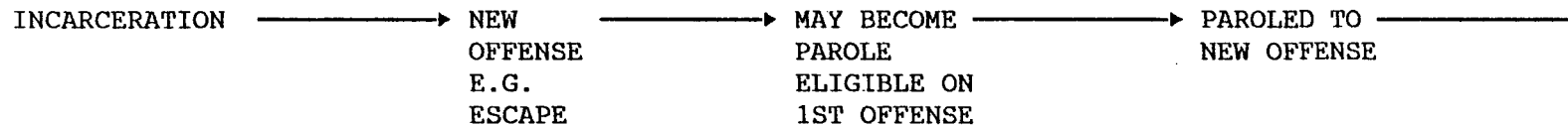
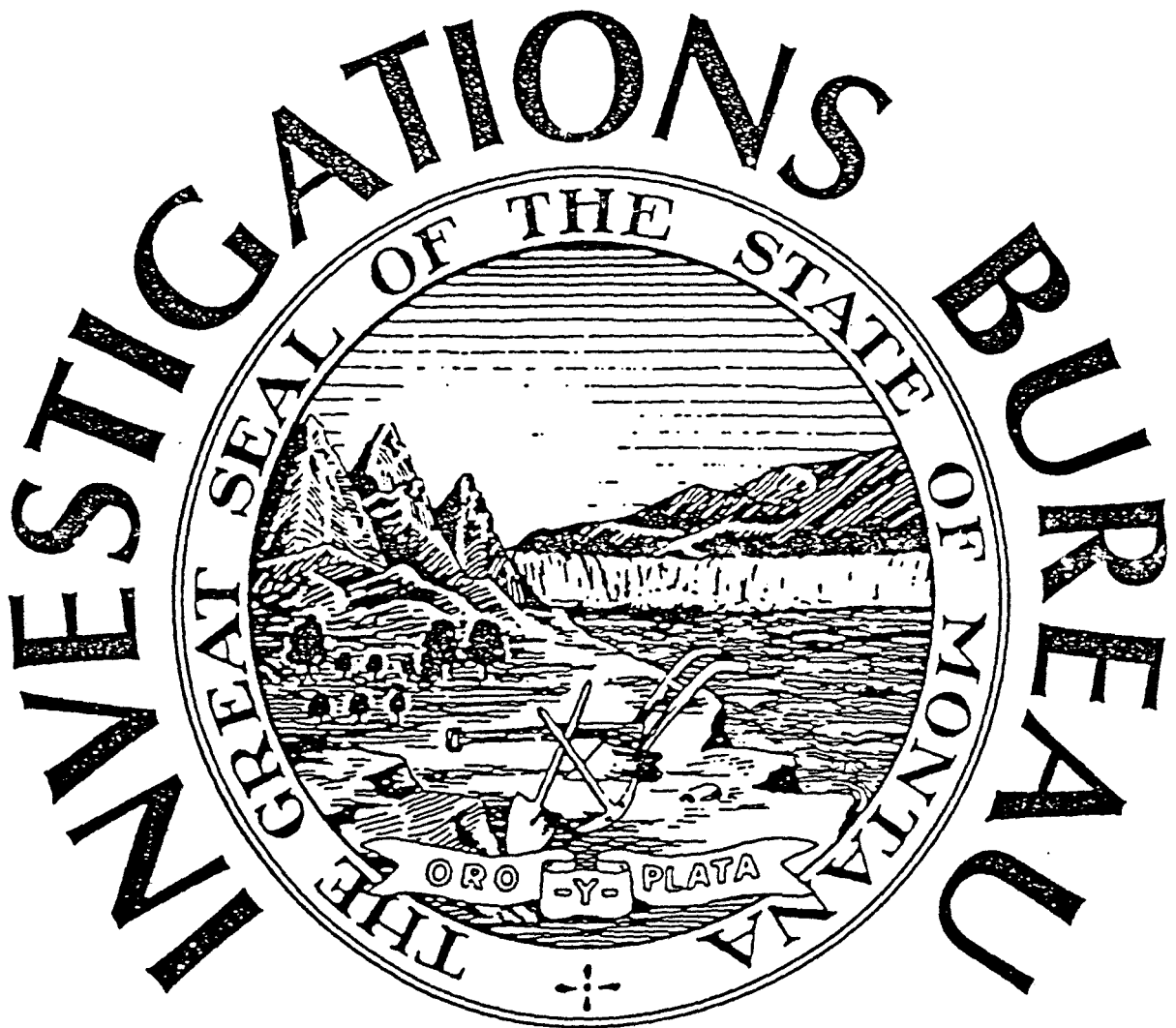


EXHIBIT 5
DATE 3/7/89
SB 21

DEPARTMENT OF REVENUE



3-7-89

SB21
House Judiciary Committee
Summary of testimony
Rick Day, Bureau Chief
Investigations Bureau
Investigations & Enforcement Division
Department of Revenue
March 7, 1989

The department's investigative authority is based on a variety of statutory sections and designations. SB21 merely extends that authority in a very limited fashion. Peace officer designation for DOR investigators (which is already found in the gaming and tobacco tax areas) would be granted in public assistance (AFDC, food stamps, and medicaid) criminal fraud investigations. The following summarizes key points which support this legislation.

- 1) The proposal requires no additional staff but is intended to make existing staff more effective by allowing bureau investigators to serve notices to appear and arrest warrants generated from county attorneys.
- 2) Eliminate delay caused by extensive service demands on local law enforcement.
- 3) Let defendants and the public see more immediate sanctions as a result of fraud.
- 4) Allow for quicker initiation of recovery. The ability to serve warrants would result in at least a 40% or \$50,000 increase in court ordered restitution. While the number of total public assistance dollars involved in cases has increased, the amount of court ordered restitution has dropped in FY88. 140 welfare fraud cases involving a potential of \$387,947 are awaiting prosecution. The courts cannot order restitution or impose penalty until the arrest warrants or notices to appear are served.
- 5) The legislation received unanimous vote of support by the Montana Sheriff's and Peace Officer's Association Board of Directors. Mike Schafer, Yellowstone County Sheriff; Bob Butorovich, Butte/Silver Bow County Sheriff; and Chuck Rhodes, Flathead County Sheriff were among the board members voting to support the legislation.
- 6) Written letters of support have been received from the Missoula, Beaverhead, Granite, and Custer County Attorneys.
- 7) Investigations Bureau investigators are now sworn peace officers, M.L.E.A. trained, and P.O.S.T. certified. By authority of the Montana Codes Annotated, investigators for the Montana Department of Revenue, Investigations Bureau, are designated peace officers

Ex. #5.
3-7-89

and as such are authorized by state law to carry concealed weapons (Sections 16-11-141, 23-5-605, and 44-11-101, MCA).

Investigations Bureau policy authorizes the carrying of weapons in situations requiring the protection of the investigator or others and not during the normal course of daily activities.

Handout Summary (attached)

- a) Summary of testimony
- b) Example data of pending arrest warrants
- c) Letters in support
 - Beaverhead County Attorney
 - Custer County Attorney
 - Granite County Attorney
 - Missoula County Attorney
- d) Major case review 1988
- e) Montana Standard news article
- f) General statistics - Investigations Bureau
- g) Welfare fraud activity summary FY86-88
- h) Dollar loss referred for prosecution graph
- i) Potential recovery vs. expense graph
- j) Investigations Bureau firearms policy
- k) Documents to clarify investigators' status
 - page 1 position description
 - oath of office
 - firearms qualification

PROBLEM OR OPPORTUNITY: The Investigations Bureau is responsible for investigation and referral of welfare and medicaid fraud cases to the county attorneys for prosecution. In many cases a criminal charge is filed. However, due to extreme local law enforcement caseloads, delay or non-service of arrest warrants or notices to appear keeps a large number of cases from getting to court. The Investigations Bureau needs the ability to serve warrants or notices to appear. This authority would result in more prosecutions and a higher level of restitution.

JUSTIFICATION: In 1973 the legislature empowered the Department of Revenue to investigate public assistance fraud based on referrals from the Department of Social and Rehabilitation Services (SRS). The Department of Revenue's Investigations Bureau is the unit responsible for public assistance fraud investigations. In addition to recipient fraud investigations, the Investigations Bureau assumed the responsibility for vendor fraud investigations following the elimination of the Medicaid Fraud Bureau in 1986.

The Investigations Bureau's role has been purely investigative relative to public assistance fraud. SRS has assumed responsibility for the civil collection of fraud debts and overpayment. The state's 56 county attorneys handle prosecution and the various police and sheriffs' departments arrest and serve notices to appear. Beginning in 1985 SRS and DCR began focusing investigative efforts on the cases involving the highest dollar loss.

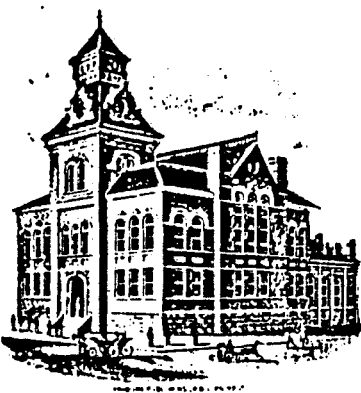
In some counties where the demand for service is great the problem is particularly apparent. The following is an example of pending arrest warrants, which preclude court action until served in a Montana county:

DATE DELIVERED TO COUNTY ATTORNEY	AMOUNT
APRIL 7, 1987	\$2,221.22
MAY 22, 1986	\$12,391.72
MAY 8, 1981	\$12,329.82
JANUARY 8, 1987	\$4,449.29
MARCH 26, 1986	\$423.00
APRIL 19, 1978	\$783.00
JANUARY 8, 1987	\$2,704.89
AUGUST 16, 1984	\$1,738.00
MAY 22, 1986	\$449.00
MARCH 26, 1986	\$0.00
MAY 22, 1986	\$2,323.91
JANUARY 8, 1987	\$3,672.00
JANUARY 8, 1987	\$0.00
DECEMBER 4, 1985	\$438.00
FEBRUARY 1, 1985	\$3,188.68
	\$47,112.53

Peace officer status would 1) allow bureau investigators to serve notices to appear and arrest warrants generated from county attorneys relative to public assistance fraud cases, 2) eliminate delay caused by extensive service demands on local law enforcement, 3) let the defendants and the public see more immediate sanctions as a result of fraud and 4) allow for quicker initiation of recovery. The ability to serve arrest warrants would result in at least a 40% or \$50,000 increase in court ordered restitution.

IMPACT ON OTHERS: Local agencies should benefit by reduction in demand for service of warrants and notices to appear and the change is limited to public assistance matters. Serving of warrants is a commonplace occurrence for other state agencies (Highway Patrol and Fish, Wildlife and Parks). Therefore, assumption of this obligation by state investigators would not be unusual. The taxpayers would be better served and those charged with public assistance fraud would face quicker court action. The public assistance recipient would be protected as the arrest or service would be undertaken pursuant to lawful warrant or notice. SRS would not suffer adverse image effects as the Investigations Bureau would be requesting the legislation and taking the field enforcement action. Finally, the budget would not be adversely affected as the request would not involve additional manpower, but would make the fraud prosecution effort more effective.

AUTHORSHIP: Rick Day, Investigations Bureau Chief,
Investigations and Enforcement Division, Department of Revenue,
Old Livestock Building, Helena, Montana - Tel. 444-2846.



CE OF THE COUNTY ATT EY
BEAVERHEAD COUNTY, MONTANA

EX #5
3-7-89

2 SOUTH PACIFIC, CL #2
DILLON, MONTANA 59725
(406) 683-4308

December 6, 1988

THOMAS R. SCOTT
COUNTY ATTORNEY
W. CECIL JONES
DEPUTY
CALVIN ERB
DEPUTY

Rick Day
Department of Revenue
Investigation Division
Old Livestock Building
Helena, Montana 59620

RE: PEACE OFFICER STATUS FOR WELFARE FRAUD INVESTIGATORS

Dear Mr. Day:

Proposed legislation has come to my attention which would amend Section 53-2-501, M.C.A. (1987), to designate the Department of Revenue a criminal justice agency with designated employees and representatives granted peace officer status for the powers of search, seizure and arrest for the enforcement and investigation of Montana laws relating to public assistance and vendor payments.

This office wholly supports the above proposed legislation. I believe the above legislation to be in the best interests of the local law enforcement agencies and would promote enforcement of the laws relating to welfare fraud. Any time we can improve the effectiveness and efficiency of criminal prosecutions, we should attempt to do so. The above proposed legislation is a good step in that direction.

If I can be of any assistance with respect to this legislation, please let me know.

Sincerely yours,

Thomas R. Scott

Thomas R. Scott
Beaverhead County Attorney

TRS/clgh

bc: TOM OBERWEISER, INVESTIGATOR ✓
MONTANA DEPARTMENT OF REVENUE

CUSTER COUNTY ATTORNEY: KEITH D. HAKER
DEPUTY COUNTY ATTORNEY: J. DENNIS CORBIN



Custer County Attorney

Custer County Courthouse
1010 Main
MILES CITY, MONTANA 59301
(406) 232-7800 Ext. 20

December 2, 1988

RECEIVED

DEC 05 1988

Mr. Rick Day, Bureau Chief
Investigations Bureau
Department of Revenue
Old Livestock Building
Helena, Montana 59620-2710

DEPARTMENT OF REVENUE
INVESTIGATIONS PROGRAM

RE: Department of Revenue-Proposed Legislation-
Peace Officer Status for Welfare Fraud Warrant Service

Dear Rick:

I am writing to advise you that I support the proposed legislation which would provide for peace officer status for welfare fraud warrant service. It is my understanding that the proposed legislation would grant peace officer status with the powers of search, seizure, and arrest for the enforcement and investigation of laws relating to public assistance and vendor payment.

I believe that this change would improve the efficiency of your department and in addition, would reduce the work load of local law enforcement officials, who are having difficulty in obtaining funding to hire an adequate staff.

Sincerely,

A handwritten signature in black ink, appearing to be "Keith D. Haker", written over a circular stamp.

KEITH D. HAKER
CUSTER COUNTY ATTORNEY

KDH:tsc

cc: Brent Richlen, Investigator
Department of Revenue

Ex. #5
3-7-89

J. ALLEN BRADSHAW

Granite County Attorney

BOX 490

PHILIPSBURG, MONTANA 59858

PHONE 406 - 859 - 3541

December 7, 1988

To Whom It May Concern

Re: Peace Officer Status For Welfare Fraud Warrant Service

Gentlemen:

I am writing this letter to support proposed legislation, which I understand is being presented to give the Department of Revenue status as a Criminal Justice Agency and designating certain department employees as Peace Officers for the investigation and enforcement of laws relating to public assistance.

Quite often, I prosecute individuals who have violated welfare laws, the penalty of which constitutes the violation as a crime.

I feel it is vitally important that the employees handling the investigation of these violations be given full authority to make searches, seizures, and arrests, the same as any other Peace Officer working in the Criminal Justice system.

I would appreciate your response to my request of your support on this legislation.

Thanking you and awaiting your reply, I am,

Respectfully yours



J. Allen Bradshaw

JAB/bd

24. 25
3-7-89

MISSOULA COUNTY

OFFICE OF THE ATTORNEY
MISSOULA COUNTY COURTHOUSE
MISSOULA, MONTANA 59802
TELEPHONE (406) 721-5700

ROBERT L. DESCHAMPS III
COUNTY ATTORNEY

December 6, 1988

RECEIVED

DEC 08 1988

DEPARTMENT OF REVENUE
INVESTIGATIONS PROGRAM

Rick Day
Department of Revenue
Investigation Bureau
Old Livestock Building
Helena, MT 59620

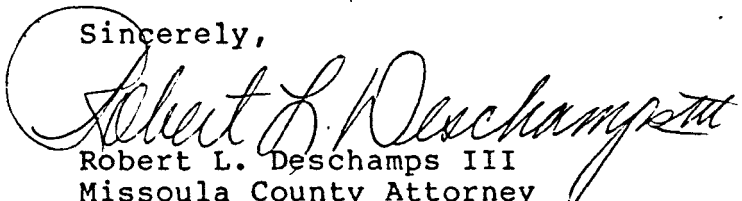
Dear Rick:

I recently learned that the Department of Revenue is considering seeking legislation making Investigation Bureau Investigators peace officers, at least while acting within the scope of their duties. Please be advised that I strongly support this legislation as it appears to me that it is wasteful of our limited resources to require Department of Revenue personnel to have to deal with local law enforcement agencies to do such mundane tasks as apply for and execute search warrants.

Frankly I feel that Department of Revenue Investigation Bureau Investigators ought to be peace officers for all purposes since there are frequently occasions when there status as sworn peace officers could be a great assistance to other law enforcement agencies. Limiting their peace officers status to specific areas of responsibility only confuses the matter and creates problems when they act in areas that are not clearly within the realm of their duties.

If I can do anything more to assist in this endeavor, please do not hesitate to contact me and I would be happy to do whatever I can.

Sincerely,


Robert L. Deschamps III
Missoula County Attorney

RLD/gkm

PUBLIC ASSISTANCE FRAUD PROSECUTION
Major case review 1988

Ex. #5

3-7-89

Yellowstone County- defendant pled guilty to felony theft (fraudulently obtaining public assistance) and was sentenced to six years deferred imposition, placed on probation and ordered to pay \$7,040 as restitution. The defendant had failed to report his wife's employment at the Billings Deaconess Hospital.

Valley County- defendants pled guilty to felony theft (fraudulently obtaining public assistance) and were sentenced to 5 years in prison. The sentence was suspended provided the defendants be placed under supervision, pay restitution of \$17,965 with \$10,000 paid in advance and 5 days in jail. The defendants failed to report \$675 a month and a \$10,425 lump sum workman's compensation payments.

Butte-Silverbow County- defendant pled guilty to felony theft (fraudulently obtaining public assistance) and was sentenced to 2 years deferred imposition, placed under supervision and ordered to pay \$6,911 as restitution. The defendant failed to report her daughter's social security payments for about 2 1/2 years.

Yellowstone County- defendant pled guilty to felony theft of public assistance and was sentenced to 10 years in prison. The sentence was suspended provided the defendant was placed on the intensive supervision probation program, and paid \$3,624 as restitution. The defendant failed to report a \$10,000 insurance settlement check.

Butte-Silverbow County- defendant pled guilty to felony fraudulent obtaining of public assistance. Imposition of sentence was deferred for six years provided the defendant was placed under supervision and paid \$24,243 as restitution. For 3 years the defendant had failed to report monthly social security benefits ranging from \$700 to \$800.

Lewis & Clark County- defendant pled guilty to felony theft of public assistance and was sentenced to 10 years in prison with all but 20 days suspended provided the defendant pay \$5,229 in restitution (125% of the public assistance fraudulently obtained), and perform 250 hours of community service. The defendant failed to report income from three employers during a 1 1/2 year period.

Fergus County- defendant pled guilty to felony theft of public assistance. Imposition of sentence was deferred for 6 years provided the defendant was placed under supervision and paid \$4,094 as restitution plus 10%. The defendant failed to report her and her husband's income for about one year.

Ex. #5

3-7-85

2—The Montana Standard, Butte, Thursday, September 1, 1988

Butte / Silver Bow

Who gets welfare in Butte? A profile emerges

By Jim Tracy
Standard Staff Writer

Welfare recipients in Butte are mostly men between the ages of 26 and 50.

Many moved here looking for a job and most have been on general assistance for six months or less.

That's the profile that is beginning to emerge from a survey conducted by a committee that is studying the local welfare system.

Chief Executive Don Peoples hopes to use results of the survey and other information to present to an interim legislative task force that is conducting hearings on welfare statewide.

Welfare and welfare reform are likely to dominate discussion at the 1989 Legislature.

Peoples says he wants to make sure the state group has precise information on Butte-Silver Bow, which is one of 12 counties with welfare departments operated by the state.

Although the local survey is not yet complete, preliminary findings indicate that most welfare recipients would work given the opportunity.

Nearly half of the respondents said they are receiving general assistance for one reason: They can't find a job.

Researcher Wendi Hubacka has interviewed 177 people and hopes to

talk to another 50 or so to finish the survey. That would represent nearly half of the people the State Department of Social and Rehabilitation Services office in Butte has on its general assistance rolls.

Hubacka's findings are somewhat skewed since she has interviewed mostly people who have recently applied for general assistance and been referred to a state-funded work program operated by the AFL-CIO and known as Project For People.

But she said she hopes to get a more balanced picture of welfare recipients with her next set of interviews.

In a report to the local committee Wednesday morning, Hubacka noted that men receiving GA outnumbered women 151 to 26.

Among the men, 59 were between the ages of 35 and 50; 49 were between 26 and 35; 25 were 18 to 25 and 18 were over 50.

Sixteen of the women interviewed were 18 to 25.

Eighty-two, or 46 percent of the respondents, said they were on welfare because they couldn't find a job; 30, or 17 percent, said they lacked the education and skills to land a job; 27, or 15 percent, said they needed welfare because of personal or social circumstances; and 15, or 8 percent, said they suffered from medical problems.

Nearly 80 percent, or 140 of the respondents, said they had been receiving general assistance for one to six months. Only 12 responded that they had been on GA for over two years.

Asked how long they had lived in Butte, 43 said less than a month, 44 said one to six months, 15 said six months to a year, eight said one to two years, and 31 said over two years.

Thirty-six of the respondents, or 20 percent, have lived in Butte all their lives, and 54, or 30 percent, had left Butte and returned.

Where did they come from?

According to the survey, 104 moved here from out of state and 37 from elsewhere in Montana.

Washington was the last stop before Montana for 11 of the respondents. Ten moved here from California, nine from Wyoming, eight from Oregon, seven each from Idaho and Arizona and six each from Colorado and Nevada.

Helena was listed as the previous residence by nine respondents. Billings was listed by eight and Missoula by six.

But no matter where they came from, 134 said they wanted to make Butte their home. Only 18 said they didn't plan to stay in Butte and 25 were undecided.

Questions about employment produced mixed results.

Fifty-seven answered that they had been employed for more than two years and 55 said they had been employed for six months or less.

Asked why their most recent job ended, 54 said they had been laid off, 51 quit for personal reasons, 41 said the job was only temporary, 13 said they were fired and 12 said they quit for health reasons.

Only six said they had never had a job. Only 47 said they had received unemployment benefits.

Asked what prevented them from finding employment, 49 replied that there were "no jobs."

Thirty-seven said they lacked the skills and education to get a job, 21 cited low wages paid at the available jobs, 20 said they lacked the transportation, clothing or tools needed for a job, and 14 responded that they were disabled.

Others offered more personal reasons for not having a job.

One said he couldn't get along with other people. Another mentioned a prison record. Still another cited racial discrimination.

Fifty respondents said the lack of jobs was the major barrier to employment for most people. Another 45 cited lack of skills; 26 said they were unmotivated; 14 offered that minimum wage jobs don't pay as much as general assistance; and 11 said laziness was a barrier to employment.

Survey suggestions: 'Bust' frauds, find jobs

People surveyed by Wendi Hubacka, a researcher for the chief executive's task force on welfare, also were asked what they would do to improve the system.

They were asked: "What recommendations would you make to legislative leaders on how to reduce general assistance costs and make a more balanced budget?"

Here is a sampling of their answers:

- Workfare is a form of harassment ... wages and salaries are not essential.
- Bust the people who defraud the system. ... Get rid of the ones who are ripping off the system. ... Make them a spectacle for everyone else so it won't happen so much.
- Teach social workers what's available in training and teach them how to spot drug abuse and mental illness. ... Recognize what's going on with these people.
- You need to bring in jobs, even if it's for minimum wage, and find investors.
- Cut general assistance to rent alone and work out deals with renters, but still keep Food Stamps.
- Check out the general assistance people and make sure they are legitimate. ... Have people checked out more thoroughly.
- Create more jobs and cut back on how much GA is given to people.
- Have a percentage pay-back if a person receives over and above personal needs.
- Create more jobs where the employer pays part of the wages and the government pays part.
- Send the foreigners back to their own country.

Ready for life of leisure

Firefighters checked for warrants

The Investigations Bureau was established in 1973. The Bureau is funded through federal, liquor revolving, video gaming, and general fund sources. Welfare and Medicaid fraud investigations receive either 50% or 75% federal match depending on the type of fraud. Liquor and gaming investigation activities are designed to 1) protect the public health, welfare, and safety and 2) assure the \$10.5 million in gaming tax and 17 million in liquor system net profit and taxes.

I. Number and type of investigations initiated, completed or closed.

	Completed		Opened		Closed		Issued	
	FY87	FY88	FY87	FY88	FY87	FY88	FY87	FY88
Welfare Fraud			187	200	161	161		
Medicaid Fraud			1	2	0	0		
Video Gaming								
Inspections	859	1933						
Violations							7	39
Warnings							54	302
Backgrounds	288	198						
Special Invest			87	314	60	235		
Liquor								
Inspections	54	139						
Violations							42	38
Warnings							62	95
Special Invest			100	94	78	85		
Backgrounds	1451	1738						
License Invests			619	642	651	522		
Local Law								
Enforcement								
Assist			15	11				
Totals	2652	4008	1009	1263	950	1003	165	474

Welfare Fraud	FY87	FY88
Criminal Convictions	32	24
Collections-Expenses		
Dollar loss of fraud		
investigated and referred		
for prosecution	\$222,640	\$254,516
Court ordered restitution		
or collection	\$128,774	\$107,766
Food stamp savings		
Automatic disqualification	\$ 17,280	\$ 12,960
TOTALS	\$368,694	\$375,242
Program Expenses		
(federal & state)	\$189,822	\$206,165

Ex #5

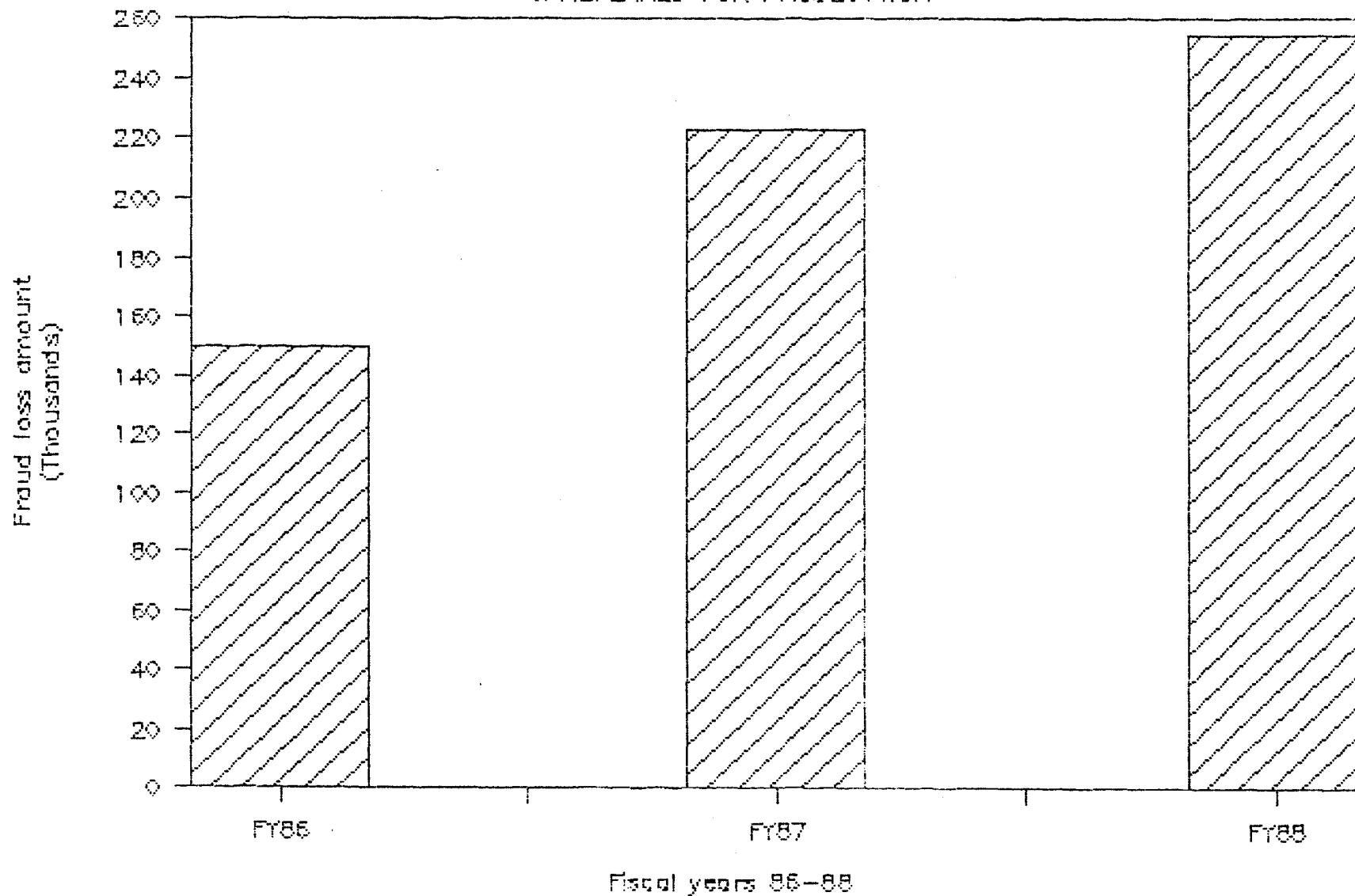
3-7-85

WELFARE FRAUD INVESTIGATIVE ACTIVITY FY86-88

FISCAL YEAR	REQUESTS FOR PROSECUTION NUMBER	LOSS AMOUNT	RESTITUTION	NEW CASES	CLOSED CASES
FY86	61	\$149,634.97	\$103,505.29	148	497
FY87	57	\$222,640.07	\$128,774.03	187	161
FY88	74	\$254,516.11	\$107,765.55	200	161
Totals	192	\$626,791.15	\$342,044.87	535	819

\$ LOSS OF WELFARE FRAUD INVESTIGATED

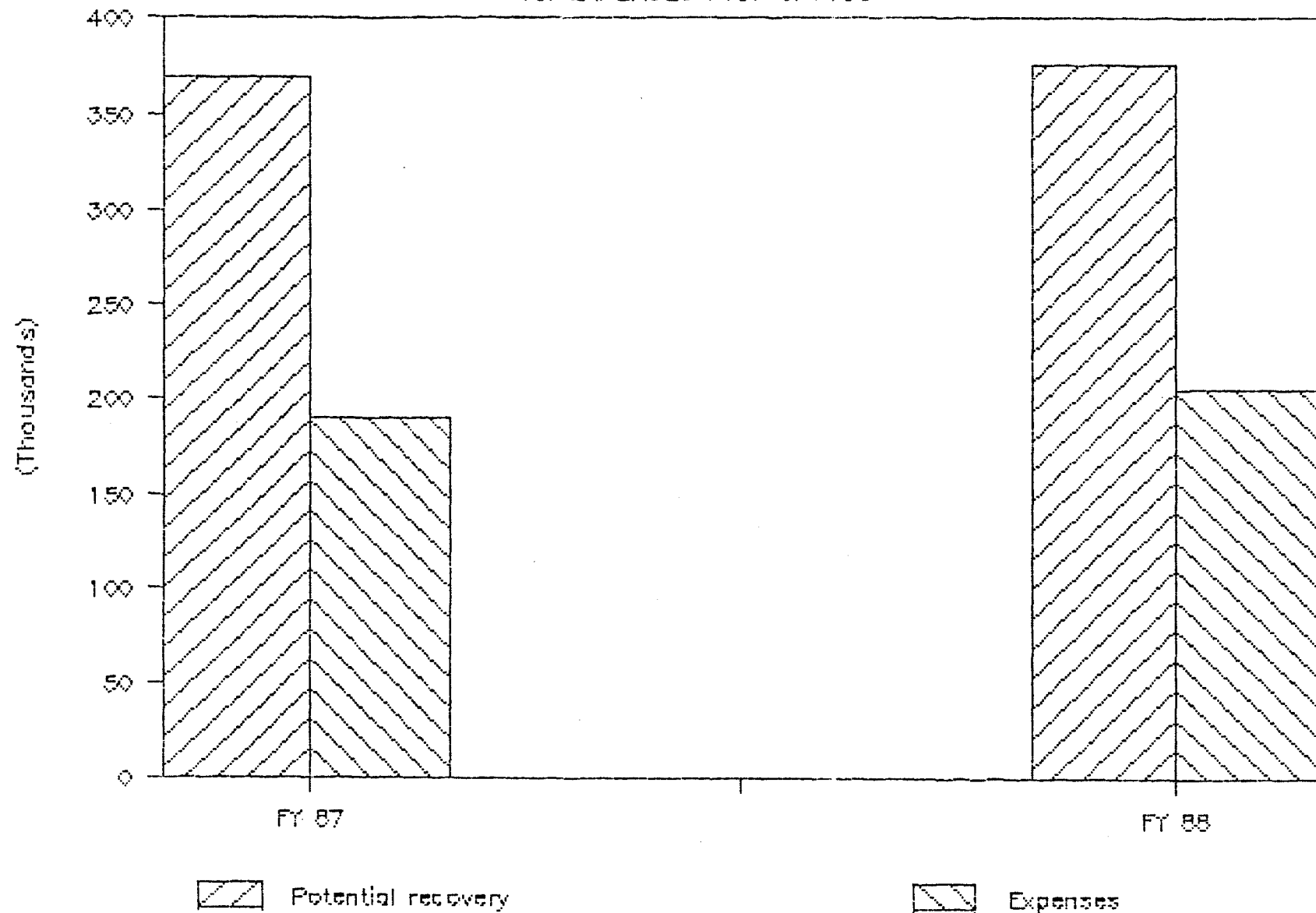
& REFERRED FOR PROSECUTION



Ex #5
3-7-88

FRAUD INVESTIGATIONS POTENTIAL RECOVERY

VS. EXPENSES FY87 & FY88



Ex. #5
3-7-89

DEPARTMENT OF REVENUE
Investigations Bureau

A D M I N I S T R A T I V E
M A N U A L

SECTION: ADMINISTRATION

3-7-89

SUBJECT: Firearms Policy

PURPOSE:

- 1) To recognize investigator peace officer status.
- 2) To authorize investigator discretion concerning concealed weapons.
- 3) To clarify use of deadly force.
- 4) To establish standards for investigator qualification and training.
- 5) To standardize weaponry carried by investigators.

AUTHORITY:

By authority of the Montana Codes Annotated, investigators for the Montana Department of Revenue, Investigations Bureau, are designated peace officers and as such are authorized by state law to carry concealed weapons. Sections 16-11-141, 23-5-605, and 44-11-101, MCA.

POLICY:

The Department recognizes peace officer status is a full time designation, and the investigators are subject to the rights and responsibilities associated with that status.

The Department recognizes in some circumstances weapons are necessary for the protection of the investigators and others. Therefore, the policy sets forth requirements for the carrying of weapons by investigators.

The policy is not intended to authorize the carrying of weapons during the normal course of daily duties. The necessity for carrying firearms shall be left to investigator discretion and be based upon the particular situation.

The investigator trainee or probationary investigator will be prohibited from carrying weapons without specific approval from the Bureau Chief.

DEPARTMENT OF REVENUE
Investigations Bureau

A D M I N I S T R A T I V E
M A N U A L

SECTION: ADMINISTRATION

SUBJECT: Firearms Policy

Before an investigator is allowed to carry a weapon, the following requirements must be met:

- 1) The investigator must have successfully completed basic firearms training and qualification at the Montana Law Enforcement Academy.
- 2) The investigator must have successfully completed yearly firearms training and qualification as provided by the Department.

Weapon Restrictions

The investigator may carry any weapon provided it is no smaller than .38 calibre. It must be a revolver or semiautomatic with barrel length of 2" to 6". Shotguns will not be carried by the investigator; however they may be required when assisting other law enforcement personnel. Familiarity with the shotgun is desirable and periodic shotgun training will be provided by the Department.

Discharge of Weapon

Any time an investigator discharges his/her weapon in the line of duty (excluding training), a complete report describing the reason for the discharge will immediately be provided by the investigator to the Bureau Chief.

Use of Deadly Force

Use of force, likely to cause death or severe bodily injury, may only be used if the investigator believes such force is necessary to prevent imminent serious bodily harm or death to him/herself or others or to prevent the commission of a forcible felony. Sections 45-3-101 and 45-3-102, MCA.

3-7-87

DEPARTMENT OF REVENUE
Investigations Bureau

A D M I N I S T R A T I V E
M A N U A L

SECTION: ADMINISTRATION

SUBJECT: Firearms Policy

If possible all reasonable alternatives to the use of deadly force must be considered.

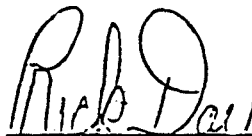
Warning shots are strictly prohibited. The only time a weapon will be discharged in the line of duty is when the situation meets the requirements of Sections 45-3-101 and 45-3-102, MCA.

Firearms Safety.

In order to protect him/herself and others from serious injury through accidental discharge, the investigator will handle his/her weapon in a safe manner at all times.

The Department's firearms instructor will be in charge of all firearms training and qualification and shall have the authority to remove or restrict anyone from the firing line at such training.

Approved



Rick Day
Investigations Bureau Chief

POSITION DESCRIPTION

1. Current Classification Title: Revenue Investigator I
Class Code: 168150
Grade: 13
Position Number: 4121

Proposed Classification Title: Revenue Investigator II
Class Code: 168151
Grade: 14
Position Number: 4121

2. Department of Revenue
Investigations & Enforcement Division
Investigations Bureau
3. Old Livestock Building
Helena, Montana 59620
(406) 444-2846
4. Name of Employee: Tom Oberweiser
Prepared By: Management and Employee
5. Duties And Responsibilities Of Work Unit

The primary function of the investigators of the Department of Revenue, Investigations & Enforcement Division, is the investigation of matters pertaining to alcoholic beverage control (16-1-101, MCA), fraudulent obtaining of public assistance (53-2-107, MCA), tobacco tax enforcement (16-11-141, MCA), food stamp trafficking (45-6-312, MCA), medicaid fraud (53-6-111, MCA) and video gaming control (23-5-601, MCA). Other investigations are performed as the director may deem necessary relating to department regulations and for gathering information related to criminal or civil action to which the department or the State of Montana is a party.

6. Describe The Duties And Responsibilities Of The Position

Senior investigators are designated as peace officers with full authority of arrest, search and seizure. Receives referrals from the central office and supervisors which contain requests for regulatory activities and investigation of suspected violations of departmental regulations or state laws, or requests for services as called for by the Director of DOR or the Governor's Office. Independently investigates matters involving alcohol beverage, tobacco tax, welfare fraud, food stamp trafficking, video gaming control in an assigned area. Maintains the highest level of personal honesty and professional integrity.

Ex. #5
3-7-89

OATH OF OFFICE

STATE OF MONTANA
Lewis & Clark } ss.
County of _____

I, Thomas Oberweiser, do solemnly swear (or affirm) that I will support,
protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I
will discharge the duties of my office (Revenue Investigator I) with fidelity
(so help me God).

Sworn to and subscribed before me this 5th day of August, A. D. 1988



Thomas Oberweiser
Notary Public
Helena MT
3-15-91



STATE OF MONTANA

DEPARTMENT OF REVENUE INVESTIGATION DIVISION

Ex. #5
3-7-89



IN SERVICE TRAINING FIREARMS TRAINING AND QUALIFICATION

CERTIFICATION THAT INVESTIGATOR Tom Oberwiser HAS SUCCESSFULLY
COMPLETED TRAINING IN THE USE OF THE HANDGUN AND POLICE SHOTGUN ON AUGUST 3, 1988
IN HELENA, MONTANA

QUALIFICATION SCORE 96 %

MIKE OTTERBERG
FIREARMS INSTRUCTOR
MONTANA DEPT. OF REVENUE
INVESTIGATIONS BUREAU

A handwritten signature in cursive script that reads "Mike Otterberg".

COMMENTS:

EXHIBIT _____

DATE _____

HB

COMMITTEE

DATE MARCH 7, 1989

SPONSOR SENATOR VAN VALKENBURG

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. SENATE BILL 347DATE MARCH 7, 1989SPONSOR SENATOR VAN VALKENBURG

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Robert L. Deschamps III	Mont. Crim. Procedure Comm.	✓	
Michael Sherwood	MTLA	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

JUDICIARY

BILL NO. SENATE BILL 258

DATE March 7, 1989

SPONSOR SEN. PINSONEAULT

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. SENATE BILL 312DATE March 7, 1989SPONSOR SEN. PINSONEAULT

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Don Judge	MT STATE AFL-CIO		X
Tom Hopgood	Mont. Assoc. Re. Hous.	✓	
Jaqueline Terrell	Amer. Bus. Assoc.	X	
Jim Jensen	MERC - Helena		X
Mike Sherwood	MTCA		X

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. SENATE BILL 21DATE March 7, 1989SPONSOR Sen. Harp

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Rick Day	Helena	✓	
Robert L. Deschamps III	Missoula	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on March 8, 1989, at 8:09 a.m.

ROLL CALL

Members Present: All members were present.

Members Excused: None.

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

HEARING ON SENATE BILL 45

Presentation and Opening Statement by Sponsor:

Sen. Joe Mazurek, Senate District 23, stated SB 45 deletes Section 40-8-121 (4), MCA, relating to private adoption placements, enacted in 1983 which was based on a desire from the Department of Social and Rehabilitation Services (SRS) to get people to file petitions for adoption as quickly as possible after placement of a child is made with them. This subsection has created a problem in that although adoption agencies do preplacement investigations, postplacement investigations, and then send the necessary paperwork out for the adoption as quickly as possible, all of this may not occur within one year in accordance with the statute. Sen. Mazurek noted adoptive parents want the legal relationship established as quickly as possible, which is hopefully within the one-year provision. He indicated no penalty is provided for not doing so within one year. Concern has been expressed as to whether an adoption may be set aside if this requirement is not met. Sen. Mazurek felt this requirement was a trap for the unwary, was not self-enforcing, and potentially jeopardized an adoptive placement.

Testifying Proponents and Who They Represent:

None.

Proponent Testimony:

None.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions from the Committee: In response to a question from Rep. Aafedt as to whether an adoption would ever be filed if the one-year requirement were eliminated, Sen. Mazurek responded the concern is not that the parents would not file the petition for adoption, but if it is not done so within one year, the adoption would be jeopardized at some future time, and, therefore, the arbitrary one-year deadline is unnecessary.

Rep. Brown asked whether there were some time period, say a year or a year and a half, by which it would be rare the petition had not been filed. Sen. Mazurek felt the same problem would be encountered no matter what date were used.

Closing by Sponsor: Sen. Mazurek closed.

DISPOSITION OF SENATE BILL 45

Motion: Rep. Brooke moved SB 45 BE CONCURRED IN. Rep. Addy seconded the motion.

Discussion: Rep. Aafedt expressed concern about the proposed parents not filing the necessary paperwork within the one-year deadline which meant they were breaking the law. With this change, that has been eliminated so they are no longer breaking the law, but there is no requirement that they have to file. Rep. D. Brown responded that in 1981 this was a major piece of controversial legislation which involved a great deal of discussion. There was concern at that time this provision was too stringent and would cause some of the problems which were discussed today. SRS at the time was present trying to clean up the statutes with regard to adoption and attempting to speed up the process with regard to all parties who benefit from the process. Rep. D. Brown indicated he was comfortable with this deletion as he felt

if it were a major problem, SRS would be present in full force, and, therefore, their absence seemed to indicate they had no problem with the deletion.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: The motion SB 45 BE CONCURRED IN CARRIED with Rep. Eudaily voting in opposition.

HEARING ON SENATE BILL 333

Presentation and Opening Statement by Sponsor:

Sen. Joe Mazurek, Senate District 23, stated SB 333 was a bill brought to the legislature by the State Bar of Montana Section on Tax and Probate. This bill is akin to the Code Commissioner bill, represents the efforts on behalf of committees of the State Bar of Montana, and deals with trusts and trustees. For the past three years, the State Bar Section on Tax and Probate has been working on modernizing the trust law which began being incorporated into our statutes prior to statehood. Sen. Mazurek indicated that as a result of a hundred years' action by the legislature, things don't mesh very well and many sections no longer apply. This bill is an effort to review the existing trust statutes, modernize the language, organize it better, eliminate some of the procedural problems, and eliminate some inconsistencies in the trust law. It's a complete rewrite of the trust statutes in the State of Montana.

Testifying Proponents and Who They Represent:

Professor E. Edwin Eck, University of Montana School of Law
Walter S. Murfitt, Helena Attorney
George Goodrich, Missoula Attorney
Howard Vralstad, Trust Division of the Montana Bankers Assoc.
Stewart Luen, Great Falls Attorney

Proponent Testimony:

Professor E. Edwin Eck, University of Montana School of Law, presented written testimony in support of SB 333 (EXHIBIT 1). Prof. Eck indicated the bill has been endorsed by both the State Bar and the Montana Bankers Association. He further indicated the bill began as a result of concern about inconsistencies in the trust statutes. In addition,

SB 333 eliminates some antiquated language, is better organized, eliminates procedural dissimilarities, and is comprehensive.

Walter S. Murfitt, Helena attorney, stood in support of SB 333.

Mr. Murfitt was a member of the committee which proposed this law and indicated he felt it would be beneficial to his clients in that it resolves many questions frequently encountered in his profession.

George Goodrich, Missoula attorney, another member of the committee which proposed this legislation, also stood in support of SB 333. He indicated the committee members had been concerned about the sketchy state of existing Montana law and likened it to the Uniform Probate Code and Uniform Commercial Code which are working so well.

Howard Vralstad, representing the Trust Division of the Montana Bankers Association, stated the Montana Bankers Association wholeheartedly supports and endorses the legislation and urged its passage.

Stewart Luen, Great Falls lawyer, supported SB 333 in that it would be particularly valuable to his clients, mostly farmers and ranchers.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions from the Committee: Rep. Eudaily questioned the effective date provision in the bill. Sen. Mazurek explained this provision was more an applicability provision than an effective date, in that it states how these provisions will apply to existing trusts and trusts created after the effective date of this bill.

Rep. Hannah asked whether this bill allowed for trust companies to be based in other states than the state of Montana and still handle Montana trusts. Mr. Murfitt indicated that could not be done under this legislation or currently without this legislation. Rep. Hannah asked whether the trust companies then would have to stay in Montana, and Mr. Goodrich confirmed that statement. However, Mr. Goodrich indicated nothing would preclude an individual trustee from

moving out of state and still acting as trustee of an estate.

Rep. Hannah asked whether trustees can close trusts of less than \$24,000. Prof. Eck responded that was true in that section 38 of the bill allows a court to determine when a trust is uneconomically low after giving notice to all beneficiaries or the trustee, unilaterally, if the amount is under \$24,000, can make that decision without going to court. The trust property would then be distributed to the trust beneficiaries.

Rep. Mercer asked questioned the language about the trustee being liable only if the trustee is "personally" at fault. Prof. Eck indicated the sections were based upon provisions of the Uniform Probate Code which were not adopted when Montana adopted the probate code in 1974. Prof. Eck felt this codified what our courts probably would say if they had to face the issue. Mr. Goodrich went on to explain this is an effort to shield a trustee from in effect offering up his or her own assets to pay for the debts of the thing that person is managing or working on. Rep. Mercer asked what the difference was between being at fault and being personally at fault. Mr. Goodrich did not recall that was anything other than placement of words.

Closing Statement: Sen. Mazurek indicated that in addition to the committee's work, the efforts with regard to this bill had had widespread publicity in the State Bar of Montana's newsletter over the past year.

DISPOSITION OF SENATE BILL 333

Motion: Rep. Gould moved SB 333 BE CONCURRED IN, motion was seconded by Rep. Wyatt.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: Motion BE CONCURRED IN SB 333 CARRIED unanimously.

HEARING ON SENATE BILL 131

Presentation and Opening Statement by Sponsor:

Sen. Joe Mazurek, Senate District 23, indicated SB 131 is a bill concerned with the rule against perpetuities. He stated it is a rule that has existed since the common law, it is a trap for unwary lawyers, it has outlived its usefulness, and Article XIII, section 6, of the Montana Constitution specifically prohibits perpetuities, except in cases of charitable interests. Sen. Mazurek indicated this bill goes hand in hand with SB 333. He further stated the rule against perpetuities is a rule of law which protects against tying up future interests in property forever and requires a contingent interest to vest within a given time. The problem with the common law rule as it exists across the land is if you violate the rule in drafting, whatever you do is void. This bill modernizes that. It keeps the rule and continues to prevent perpetuities, but it adopts the 90-year wait-and-see approach instead of voiding things at the time of drafting because of an error in drafting. It is a uniform act that has been proposed by the National Conference of Commissioners on Uniform State Laws [NCCUSL] and was considered part of the package with the trust law revisions and probate provisions which will be heard next.

Testifying Proponents and Who They Represent:

Professor E. Edwin Eck, University of Montana School of Law

Proponent Testimony:

Professor E. Edwin Eck, University of Montana School of Law, presented written testimony in support of SB 333 (EXHIBIT 2). He stated the State Bar of Montana Trust Law Revision Committee was also in favor of this bill.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions from the Committee: No questions were asked.

Closing By Sponsor: Sen. Mazurek closed the hearing.

DISPOSITION OF SENATE BILL 131

Motion: Rep. Wyatt moved SB 131 BE CONCURRED IN. Rep. Eudaily seconded the motion.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: Motion CARRIED unanimously for SB 131 BE CONCURRED IN.

HEARING ON SENATE BILL 331

Presentation and Opening Statement by Sponsor:

Sen. Al Bishop, Senate District 46, stated SB 331 revises the Montana Uniform Probate Code to bring it in line with the NCCUSL recommendations and with the uniform code. A lot of this bill is cleanup language. In addition, the Uniform Transfers to Minors Act presently provides that at 18, they become entitled to that property. This bill amends that to include those who are 18, 19, and 20 years old to make it more desirable for people to put money in to make the transfers under the Uniform Transfers to Minors Act.

Testifying Proponents and Who They Represent:

Professor E. Edwin Eck, University of Montana School of Law

Proponent Testimony:

Professor E. Edwin Eck, University of Montana School of Law, presented written testimony in support of SB 331 (EXHIBIT 3). He indicated this act consists of 30 separate substantive provisions which in one sense are not related at all except they deal with death, dying, and taxes, but there's no overwhelming common theme.

Testifying Opponents and Who They Represent:

Walter S. Murfitt, Helena Attorney

Opponent Testimony:

Walter S. Murfitt, Helena attorney, expressed a concern about a provision in the bill which discusses the witnessing of wills. Mr. Murfitt indicated that currently a beneficiary witnessing the will does not invalidate the will but the beneficiary would lose the benefit and, if the witness would have succeeded to his share, he would get the share he would have been entitled to if the person had died intestate. His concern was about homedrawn and homedrafted wills, as he did not feel lawyers would use beneficiaries as witnesses. He strongly opposed this particular section and this section only as he felt this opened the door to additional and unnecessary litigation over will contests.

Questions from the Committee: Rep. Eudaily addressed a question to Sen. Bishop about the number of years which has changed (page 3, line 13, and page 39, line 4). Prof. Eck indicated the change on page 3 to five rather than seven years is part of the 1987 national Uniform Probate Code provisions. Prof. Eck indicated the change on page 39 changing it from 18 to 21 years brings our statutes in conformance with the Uniform Transfers to Minors Act. Rep. Eudaily asked if this meant that under no circumstances could the property not be given at age 18. Prof. Eck responded if a person wants to make a gift in a will and does not refer to the Uniform Transfers to Minors Act, the child will receive it at age 18 because under our state law that child is an adult for all purposes. However, if the Uniform Transfers to Minors Act is mentioned in the will, the property will be held until age 21.

Rep. Eudaily asked an additional question regarding a provision of the bill which required 120-hour survivorship to collect insurance proceeds. Sen. Bishop responded that was a new section, section 30, which brings the bill into conformity with the other parts of our probate code that require 120-hour survivorship, indicating the requirement should not be different for insurance proceeds than anything else.

Rep. Mercer addressed a question about section 16 which deleted the \$7,500 provision from the summary probate. He was concerned that in some situations where a person would have less than \$7,500 of net distributable estate but there wasn't a homestead allowance or exempt property, they would be denied the summary procedure that is now available. Prof. Eck indicated this provision would again bring us in compliance with the national code. The went on to explain the problem with this particular provision as it reads now is that distribution, as it is defined in the Uniform

Probate Code, talks about a gratuitous transfer as opposed to a transfer that has to be made by an estate to satisfy a claim. This provision creates an ambiguity--does it mean you don't have to publish notice to creditors--because the only way you can define a distributable estate is to actually have the creditors' claim process go forward. This act does not deal with Sections 72-3-1101 and -1102, MCA, which allows you by affidavit if the amount of the assets does not exceed \$7,500 to distribute those assets without probate, so that is not affected by this.

Closing by Sponsor: Sen. Bishop indicated there were other proponents who appeared before the Senate Committee on Judiciary. Sen. Bishop read the Uniform Probate Code comment relating to Mr. Murfitt's concern about interested witnesses. The comment indicates the purpose of the change was not to foster use of interested witnesses and attorneys who would continue to use disinterested witnesses in execution of wills, but the rare and innocent use of a member of the testator's family on a homedrawn will would no longer be penalized. This change does not increase appreciably the opportunity for fraud and undue influence. The comment went on to state the requirement of disinterested witnesses has not succeeded in preventing fraud and undue influence, and in most cases of undue influence, the influencer is careful not to sign as a witness but uses someone else.

DISPOSITION OF SENATE BILL 331

Motion: Rep. Darko moved SB 331 BE CONCURRED IN. Rep. Strizich seconded the motion.

Discussion: Addressing Mr. Murfitt's concern, Rep. Mercer commented current law states holographic wills are valid but if your two kids sign your holographic will, it is invalid, so he felt they were on the right track, yet any interested party who witnesses a will is subjecting himself to a very strong case of undue influence. He hoped that when this is off the books, lawyers would not start having just anyone witness wills, such as children and spouses, as that would be a bad idea.

Recommendation and Vote: The committee held further action taken on SB 331 so as amendments could be drafted. Final action was taken on March 9, 1989.

HEARING ON SENATE BILL 180

Presentation and Opening Statement by Sponsor: Sen. Joe Mazurek, Senate District 23, stated the Uniform Gifts to Minors Act was a provision whereby people can give gifts of property to their minor children effectively in trust without having to go through the formal legal requirement of creating a trust for their minor children. Many people have bank accounts established for their children in that way. SB 180, the Uniform Custodial Trust Act, proposes to extend that one step further and essentially allows the creation of what is known as a custodial trust--a statutory trust which would allow people to organize the ownership and management of property to preserve it for the benefit of specific individuals. Trusts are used for many reasons--to minimize taxation at the federal and state levels and to keep property together for the benefit of their children. This act is essentially a poor man's trust. It would allow people to transfer their assets into trust using the mechanism set forth entirely within the bill itself. A person would simply make reference to this act to obtain the benefits of its provisions. It differs from the typical trust because this bill would then govern all aspects of the trust relationship, including the trustee's powers. It is different in that it would exist at the will of the beneficiaries. A person might use this if one wanted to put his own property in trust for the benefit of his children or he and his wife but the trust would not arise until some future event, perhaps his incapacity or death. He would retain control as donor and beneficiary, and the trust would not arise until the future event occurred. It allows elderly people, people without significant means, and others such as those who travel frequently to establish a custodial trust to avoid the necessity of a conservator. It is simple and inexpensive. It is not intended for use by people who need specific estate planning and have substantial assets--those people will continue to use the services of attorneys, trust officers, and accountants in their estate planning. Sen. Mazurek stated this is a fairly new act which came from NCCUSL. Sen. Mazurek offered into testimony a letter which he received from Dan McLean, the chairman of the Real Property, Trust, and Probate Section of the State Bar of Montana. Mr. McLean was unable to attend the hearing but raised some concerns in his letter. Sen. Mazurek also presented written testimony expressing concerns from Kristen Juras, Great Falls attorney (EXHIBIT 5).

Testifying Proponents and Who They Represent:

Fred Patten, vice Chairman, American Assoc. of Retired Persons

Proponent Testimony:

Fred Patten, Vice Chairman of the American Association of Retired Persons State Legislative Committee, presented written testimony in support of SB 180 (EXHIBIT 6).

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions from the Committee: Rep. Eudaily questioned whether the property referred to included cash assets, stocks, and bonds or only real property. Sen. Mazurek responded it included any type of property you wanted to put in it.

Rep. Eudaily asked if there were a maximum dollar value limit this trust act addressed. Sen. Mazurek responded there was not.

Rep. Eudaily asked if we were giving elderly people the assumption this is a way to do this, cut out the attorneys' fees and do it on their own, when we might be doing them a disservice by not sending them to an attorney. Sen. Mazurek responded he thought that concern was raised in the written testimony he presented earlier. However, Sen. Mazurek hoped those who raised that concern were not doing it because they wanted to make money from doing the trusts. Sen. Mazurek felt the concerns expressed in the letters should be addressed by the committee.

Closing by Sponsor: Sen. Mazurek indicated the Governor's Council on Aging also supported this legislation.

DISPOSITION OF SENATE BILL 180

Discussion: Rep. Eudaily indicated he liked the concept of this bill but felt there were some dangers there and questioned whether it would be appropriate to sunset this bill to force the legislature to look at it in two years. Rep. Stickney also liked the concept and Rep. Eudaily's suggestion that

the bill be sunset.

Rep. Rice also had concerns with the bill. He indicated there is a move in the estate planning world to do a lot more estate planning in the area of living trusts and we would be hearing more about those. He suggested waiting for awhile and studying this further in the interim. Rep. McDonough agreed with Rep. Rice and felt a conservative approach in these things would be very wise. Rep. Addy stated another alternative to a sunset would be a delayed effective date.

Rep. Mercer felt the bill should either go into subcommittee as it needed a lot of work or let it go to the State Bar committees for further review, as he did not feel it should be passed as it is as people might use it and get themselves into more trouble than they might realize.

Motion: Rep. Nelson moved SB 180 be TABLED. Rep. Darko seconded the motion.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: The motion to TABLE SB 180 CARRIED with 7 in support of the motion and 5 in opposition.

HEARING ON SENATE BILL 338

Presentation and Opening Statement by Sponsor: Sen. Joe Mazurek, Senate District 23, stated he introduced SB 338 at the request of Penney Sey, Lewis and Clark County Restitution Officer. Sen. Mazurek and Ms. Sey worked with former District Court Judge Gordon Bennett, Helena, to develop this idea. SB 338 does something to formalize restitution programs that operate in the state. Under the sentencing powers the district courts have, they can and frequently order convicted defendants to make restitution to their victims. This bill authorizes the creation of a county restitution fund and essentially allows in cases where the defendant makes a payment to the restitution fund and the victim cannot be located, instead of that money reverting to the state to go into the unclaimed property and general fund, it would allow that money to be accumulated at the county level. It would then allow defendants who don't have the ability to make payments to victims to do public service work, essentially be paid for that work, and then that money would then go to pay the victim of that indigent defendant. It also authorizes the charging of a handling fee similar to what we do in child support payments, hopefully on a sliding fee scale not to exceed \$5 per payment, that would be

available to help operate these programs. Sen. Mazurek indicated the Senate had amended the bill at the request of the Crime Victims Compensation Fund so if a victim is compensated by the state, the state can subrogate against anything that is obtained from the defendant at the local level to prevent double recovery.

Testifying Proponents and Who They Represent:

None.

Proponent Testimony:

None.

Testifying Opponents and Who They Represent:

None.

Questions from the Committee: Rep. Gould asked of the \$75,000-85,000 recovered in Lewis and Clark County, how much they could not find the victim to give the money to. Sen. Mazurek did not have an exact figure, stated he did not know that it was a significant amount, indicated every little bit would help, and stated equally significant would be the collection fee would allow them to build up some money for the work as well as for the administration of the program.

Closing by Sponsor: Sen. Mazurek closed.

DISPOSITION OF SENATE BILL 338

Discussion: Rep. Gould asked that disposition of SB 338 be postponed so he could attempt to determine whether any money was actually not being given back to the victim. He felt they might be passing a bill that in reality would not be accomplishing anything.

Motion: Rep. Gould moved disposition of SB 338 be POSTPONED.
Motion seconded by Rep. Eudaily.

Recommendation and Vote: None.

Recommendation and Vote: Rep. Gould withdrew his motion to postpone action and Rep. Rice moved the bill BE CONCURRED IN. Motion CARRIED unanimously.

DISPOSITION OF SENATE BILL 322

Discussion: Rep. Brown asked if the committee were satisfied with the amendments which were offered. Rep. Mercer felt this was a very confusing provision and should be fixed. Rep. Brown stated it was pointed out the reason they left it this way and amended all the verbiage that was already there is it has a lengthy court history already, and they didn't want to get into rewriting everything and having to start from scratch again with the court system. Although Rep. Mercer felt that was a valid argument, he questioned how a person could voluntarily offer to produce the source but not at the same time voluntarily disclose the source.

Motion: Rep. Gould moved SB 322 BE CONCURRED IN, motion seconded by Rep. Nelson.

Amendments Offered: Rep. Gould moved Rep. Ramirez's amendments be adopted.

The motion to amend SB 322 CARRIED.

Recommendation and Vote: Rep. Gould moved SB 322 BE CONCURRED IN AS AMENDED. Motion CARRIED with a unanimous vote.

ADJOURNMENT

Adjournment: 11:10 a.m.



REP. DAVE BROWN, Chairman

DB/je

5408.min

DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date MARCH 8, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

STANDING COMMITTEE REPORT

March 8, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
SENATE BILL 45 (third reading copy -- blue) be concurred in .

Signed: _____
Dave Brown, Chairman

[REP. RICE WILL CARRY THIS BILL ON THE HOUSE FLOOR]

STANDING COMMITTEE REPORT

March 8, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
SENATE BILL 333 (third reading copy -- blue) be concurred in .

Signed: _____
Dave Brown, Chairman

[REP. MERCER WILL CARRY THIS BILL ON THE HOUSE FLOOR]

STANDING COMMITTEE REPORT

March 8, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
SENATE BILL 131 (third reading copy -- blue) be concurred in .

Signed: _____
Dave Brown, Chairman

[REP. McDONOUGH WILL CARRY THIS BILL ON THE HOUSE FLOOR]

3-8-89



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE DAVE BROWN

HOUSE DISTRICT 72

HELENA ADDRESS:
CAPITOL STATION
HELENA, MONTANA 59620

HOME ADDRESS:
3040 OTTAWA
BUTTE, MONTANA 59701
PHONE: (406) 782-3604

COMMITTEES:
JUDICIARY, CHAIRMAN
LOCAL GOVERNMENT
RULES

TO: John Vincent, Speaker of the House
FROM: Dave Brown, Chairman, House Judiciary Committee *JB*
DATE: March 8, 1989
SUBJECT: Senate Bill 180

The House Judiciary Committee has TABLED Senate Bill 180.

DB/je

STANDING COMMITTEE REPORT

March 8, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
SENATE BILL 338 (third reading copy -- blue) be concurred in.

Signed: 
Dave Brown, Chairman

[REP. RICE WILL CARRY THIS BILL ON THE HOUSE FLOOR]

STANDING COMMITTEE REPORT

March 8, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 322 (third reading copy -- blue) be concurred in as amended .

Signed: 
Dave Brown, Chairman

[REP. RAMIREZ WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Title, line 5.

Strike: "PROVIDING"

Insert: "CLARIFYING"

2. Title, lines 6 and 7.

Strike: "AGAINST" on line 6 through "PRIVILEGE" on line 7

Insert: "MAY WAIVE THE JOURNALIST SOURCE PRIVILEGE ONLY BY
VOLUNTARILY DISCLOSING THE SOURCE"

3. Page 1, lines 11 and 12.

Following: "(1)" on line 11

Strike: "Dissemination, except"

Insert: "Except"

4. Page 1, line 12.

Following: "(2),"

Insert: "dissemination"

5. Page 1, line 19.

Strike: "waives"

Insert: "does not waive"

6. Page 1, line 20.

Following: "26-1-902"

Insert: "unless the person voluntarily discloses the source"

7. Page 1, lines 22 through 25.

Strike: subsection (3) in its entirety

Professor E. Edwin Eck
University of Montana
School of Law

Rationale in Support of S.B. 333

Montana adopted a large part of its trust statutes from California in 1895. These California statutes in turn represent an 1872 version of the Field Code from the state of New York. For the most part, the Montana legislature has not amended these statutes during the 94 years since their adoption.

Additionally, the legislature has adopted various uniform acts which form another body of law to be read in conjunction with the Field Code. While those acts (see, for example, the Montana Uniform Trustees' Powers Act and the Revised Uniform Principal and Income Act) are excellent, provisions which are inconsistent still exist in the Field Code. Other inconsistencies are replete within the current trust law.

Much of Montana trust law is antiquated, especially that from the Field Code. For the most part, this antiquity is a matter of terminology. The Field Code simply does not use twentieth century English. Further, occasionally a current Montana trust statute takes a position contrary to modern trust law.

A simple listing of the chapters of Title 72 Mont. Code Ann. provides the reader with a good clue that our existing statutes are disorganized. Chapter 20 is entitled "Trusts in General" and Chapter 31 is entitled "Miscellaneous Provisions Relating to Fiduciaries." Between those chapters are located most of the provisions relating to trust law. Also sandwiched between chapters 20 and 31 are chapters which simply are not components of trust law, including the Uniform Transfers to Minors Act, codified as chapter 26, and chapter 30, dealing with the management of institutional endowment funds.

The current Montana trust statutes have not taken advantage of the work of the first or second Restatement of Trusts or of other jurisdictions' statutes. The proposed trust code codifies most of the relevant rules relating to modern trusts, making the law more accessible and understandable to the courts, lawyers, and other interested persons.

Many of the Montana statutes relating to trust law include different procedural provisions that are unnecessarily dissimilar. The proposed code unifies procedural rules.

The draft is well-organized, simplified, and comprehensive, and should serve Montana well into the 21st century. It eliminates inconsistencies and antiquated terms, clarifies administration, and is specific yet succinct. We urge your support of S.B. 333.

E. Edwin Eck
University of Montana
School of law

UNIFORM STATUTORY RULE AGAINST PERPETUITIES
Senate Bill No. 131

English Common Law Rule: "No interest is good unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest."

Purpose: Prevent property from being tied up for too long a time in trusts.

Example 1. A will has a clause which reads: "To those of my issue alive when the probate of my estate is complete."

Example 2. A trust reads: "Income to my aged Aunt Mabel for her lifetime, then income to Mabel's children, and upon the death of the surviving child, the trust is to terminate and the trust be distributed equally to Mabel's then living grandchildren." Mabel is 80 years of age and has two children in their 50's.

Both examples have provisions which violate the traditional English common law rule because of some very remote contingencies.

Criticisms:

1. Traditional English common law rule voids certain interests in property because of very remote possibilities.
2. Traditional English common law rule is very complex in its application. Even many professionals cannot apply the rule successfully.

Professor Gray:

"There are few lawyers of any practice in drawing wills. . . who have not at some time either fallen into the net which the rule [against perpetuities] spreads for the unwary, or at least shuddered to think how narrowly they have escaped it."¹

Professor Leach described the rule as a "technicality-ridden legal nightmare" and a "dangerous instrumentality in the hands of

1. Gray, The Rule Against Perpetuities p. xi (4th ed. 1942).

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most members of the bar."²

Solution: Uniform Statutory Rule Against Perpetuities

1. Is the interest valid under the traditional English common law rule? If so, the interest is still valid.

2. If the interest is not valid under the traditional English common law rule, wait and see if valid within 90 year waiting period.

3. In the rare circumstance that the interest is still not valid, the district court can reform the disposition in a manner that most closely approximates the transferor's intention.

2. Leach, Perpetuities Legislation 67 Harv. L.Rev. 1349 (1954).

E. Edwin Eck
University of Montana
School of law

AN ACT TO GENERALLY REVISE THE UNIFORM PROBATE CODE
AND RELATED LAW
Senate Bill No. 331

Sources:

1. Amendments made by the Uniform Commissioners to the Uniform Probate Code in 1987.

Example: Section 11 of the Bill would require personal representatives of estates to notify interested parties that a probate proceeding is not supervised by a court and that an interested party may petition the court on matters concerning the estate.

2. The national Uniform Probate Code.

Example: Section 13 of the Bill would make Montana section 72-3-805 conform with the national Uniform Probate Code. 72-3-805(1) reads, in part:

Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than 60 days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on his claim for 60 days after the time for original presentation of the claim has expired has the effect of a notice of disallowance [emphasis added].

3. A few of the changes are the result of my teaching estate planning at the Law School.

Example: Section 1 of the Bill would eliminate an inconsistency between the family law provisions (40-8-125) and the probate code provisions (72-2-213) as they affect inheritance and adopted children.

Endorsement:

Unanimously endorsed by the Tax & Probate Section of the State Bar Association.

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March 1, 1989

Senator Joe Mazurek
Montana State Capitol
Helena, MT 59601

Re: Senate Bill 180: Uniform Custodial Trust Act

Dear Joe:

I am belatedly responding after gathering comments from members of the Tax and Probate Council, and some trust officers, concerning the Uniform Custodial Trust Act. I hope that it is not too late for input.

Gerald Allen, an estate planning attorney in Butte, assisted me in surveying the comments of the Tax and Probate Council, which is the governing board of the State Bar Tax and Probate Section. I also spoke with David Servies, of First Trust Company of Montana, and other trust officers at Norwest Capital Management & Trust Co. I urged everyone I spoke to to write to you directly if they had specific comments regarding the bill. I was asked to respond on behalf of the Tax and Probate Section.

It is fair to say that no one I spoke to had very strong objections to the bill. What was interesting, however, was the almost uniform response that the Act is not needed, and would not likely be used much, if at all. The goals it seeks to accomplish can be attained through the use of durable powers of attorney and living wills under existing law.

Gerald Allen and Gregory Schwandt, of Great Falls, raised specific concerns about a couple of sections, particularly Sections 12 and 13, relating to liabilities of and to third persons. These sections should be closely examined to determine their effect, and amended accordingly, if the bill is to become law. Another question was raised concerning the involvement of brokerage firms in handling trust accounts. In many instances, stock brokers will be called upon to make judgments or give advice concerning the creation of the accounts, which will put them in the position of rendering legal

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advice. This is not a speculative position. My father is a stock broker in Butte, and when some of his clients have created gifts under the Uniform Transfers to Minors Act, he has been requested to explain what happens upon death of a custodian, death of a beneficiary prior to attaining the age of majority, and similar questions which should be answered only by an attorney. In the most recent example, my father was called by an attorney in general practice to explain those situations, so that the information could be passed along to the attorney's client. If this happens with gifts to minors, I would think that even more questions would be raised concerning custodial trusts.

We also have grave concern about inconsistency of this statute with the statute of wills. We all recognize that living trusts under existing law are already an exception to the statute of wills, but at least a person will seek advice from a qualified estate planning advisor concerning the use of a revocable living trust. One apparent intent of the Uniform Custodial Trust Act is to enable people to effectively have the benefit of a living trust without seeking advice. It appears to me that uniform custodial trusts under this Act increase potential for exercise of undue influence over incapacitated persons, particularly the elderly. The Act is somewhat inconsistent with the more restrictive guidelines enacted for guardianships and conservatorships which were in the news just a few years ago.

As I stated to you by telephone, we attorneys, trust officers, and others in the estate planning field, would have liked to have some opportunity to study this bill in greater detail, and to debate among ourselves the merits of the legislation. While no one is very strongly opposed against the bill, neither do they see a need for it. My greatest fear is that individuals will establish uniform custodial trusts without fully understanding the import of their actions, just as people now do with joint tenancy and other similar transfers without the benefit of competent advice. As a probate lawyer, I find myself frequently unravelling the unknowing but well-intentioned acts of decedents and their families, often at much greater expense than would have been incurred to seek competent advice in the first place.

I'm sure that you understand that the questions we raise are not in an effort to protect business for lawyers or other estate planners. Rather, these concerns are raised out of a genuine concern for what our clients may do without knowledge and advice.

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I appreciate your willingness to consider these comments. If you need further information, I would be happy to attempt to respond in greater detail, or to put you in touch with individuals who have raised some of these specific concerns.

Very truly yours,



DANIEL N. McLEAN
Chairman, State Bar of Montana
Tax and Probate Section

DNM/cr

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February 17, 1989

EXHIBIT 5
DATE 3-8-89
SS 180

Senator Joe Mazurek
Montana State Capital
Helena, MT 59620

RE: Senate Bill 180 - Uniform Custodial Trust Act

Dear Senator Mazurek:

I am an attorney with 7 years of experience in the area of wills, trusts, and estate planning. I have received and reviewed a copy of Senate Bill 180 proposing adoption of the Uniform Custodial Trust Act.

I have many concerns about the Uniform Custodial Trust Act. Unfortunately, the area of estate planning has become very complicated, and the Uniform Custodial Trust Act does not take into account many of these complications. It appears that the purpose of this bill is to help people avoid the necessity for probate and guardianship proceedings, and the concurrent attorney's fees and Court costs. I do not think that the Act is going to accomplish those purposes.

For example, suppose that John Smith has two children, Ann and Joe. He transfers \$100,000.00 worth of securities to Ann as custodial trustee for himself as beneficiary and to Ann and Joe as distributees on termination of the trust. Mr. Smith intends for the custodial trust to come into effect only upon his disability, but if he uses the standard forms as set out in Section 19 of the Act, it will become effective immediately. He won't be able to sell the securities without Ann's signature. I believe that people are going to use the Section 19 standard form, because to do otherwise would require going to an attorney, and after all, one of the purposes of the Act is to avoid attorney's fees, so they are going to resort to the least expensive method.

Now, suppose that Ann dies. Although Mr. Smith could designate a successor custodian, your standard form does not have that language. Now we have the problem of a custodial trust without a trustee. Mr. Smith could appoint a custodial trustee, but will he know that he has to do that? I doubt it. Also, assume that at the time of Ann's

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death, Mr. Smith is incompetent. He could not name a successor trustee at that point even if he wanted to. So, the persons are going to have to go into Court to have a custodial trustee appointed. That, in my opinion, will probably cost more than if Mr. Smith had gone to an attorney in the first place and had a proper trust instrument executed.

Now, assume that Mr. Smith dies. What does the custodial trustee do with the property? Let's assume that Ann left two minor children. It has been my experience that Mr. Smith would have intended for these two grandchildren to receive Ann's share, now that she is dead. However, the custodial trust form is silent in that regard. Ann has died, and Joe is the only remaining named distributee, and I believe that the custodial trustee will distribute the property to Joe to the exclusion of Ann's children.

Let me point out one other problem. Suppose that the \$100,000.00 worth of securities that have been placed into the custodial trust take a nose dive in price. The trustee decides to sell the stock and purchase new shares which are doing better. The trustee, not being advised by an attorney, buys the new shares in the name of John Smith. She should have bought them in the name of the trust, but she really does not know much about these matters, and she puts them in the name of Mr. Smith. The purpose of the custodial trust has now been defeated. I think it will be common that persons will put family members as trustees of these trusts, and that these family members really won't understand how the trust acts, and that mistakes like this will be made.

As the above scenario points out, there are many problems that the Uniform Custodial Trust Act does not address. Unsuspecting persons will attempt to use the trust without really understanding all of the consequences of their acts. In particular, the standard forms that are set out in the act will give rise to many of these problems because they are not detailed enough.

I believe that if a person wants to avoid the expense and delay of a probate, they should by all means use a trust. I, personally, am an avid fan of trusts. However, I think that only an attorney with experience in these areas can

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properly prepare a trust which will take into account all of the possible problems that may arise. A properly drafted trust will provide for successor trustees and for contingencies such as the death of a named beneficiary. The attorney will also see that assets are properly placed into the trust.

In conclusion, I don't think that many people will understand how to properly use the Uniform Custodial Trust Act, and as a result many problems will arise. Even if a person uses it correctly, it simply is not sophisticated enough to handle the many contingencies which might arise.

I would be happy to discuss this matter with you in more detail if you have any questions.

Sincerely,

CHURCH, HARRIS, JOHNSON & WILLIAMS

BY Kristen G. Juras
KRISTEN G. JURAS

KGJ/fmp

cc: Daniel McLean
P. O. Box 2529
Billings, MT 59103-2529



EXHIBIT 6
DATE 3-8-89
SB 180

1988-1989
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March 7, 1989

TO: House Judiciary Committee

FROM: Fred Patten, Vice Chairman, American Association of
Retired Persons

RE: In support of SB 180 - Uniform Custodial Trust Act.

American Association of Retired Persons supports this act for the
following reasons:

Problem: No simple way exists to establish a trust for the benefit of
one's self or a third person. Benefits of trusts are not available
to persons without extensive financial assets.

Solution: The Uniform Custodial Trust Act provides an informal means
for seniors to manage and protect their property without losing
control of that property.

Proposal: The Uniform Custodial Trust Act provides that any person may
in writing:

1. Transfer any property for the benefit of himself or any
other persons;
2. Name himself or any other person as trustee or as a beneficiary;
3. Instruct the trustee as to benefits;
4. Provide reimbursement for the trustee.

The trust may terminate upon written notice from the beneficiary
or at the death of the beneficiary.

Position: The Montana State Legislative Committee of AARP believes that
this act would be particularly beneficial to Montana's older citizens
who want to provide for the management of assets in the event of
future incapacity.

JUDICIARY

BILL NO. SENATE BILL 333

SPONSOR SEN. MAZUREK

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

CS-33

COMMITTEE

DATE MARCH 8, 1989

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. SENATE BILL 331DATE MARCH 8, 1989SPONSOR SEN. BISHOP

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Kathleen Magone	self / U of M Law School	✓	
Howard KRAVETZ	TRUST DIVISION MONTANA BANKERS ASSN	✓	
R. De Ce	Tax Section State Bar	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

JUDICIARY

BILL NO. SENATE BILL 180

SPONSOR SEN. MAZUREK

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

CS-33